



# भारत का राजपत्र

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सं. 3] नई दिल्ली, जनवरी 15—जनवरी 21, 2017, शनिवार/ पौष 25—माघ 1, 1938

No. 3] NEW DELHI, JANUARY 15—JANUARY 21, 2017, SATURDAY/ PAUSA 25—MAGHA 1, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड ( ii )

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों ( रक्षा मंत्रालय को छोड़कर ) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय

( राजस्व विभाग )

नई दिल्ली, 10 जनवरी, 2017

का.आ. 125.—केन्द्र सरकार, राजभाषा ( संघ के शासकीय प्रयोजनों के लिए प्रयोग ) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, राजस्व विभाग के अधीन प्रवर्तन निदेशालय के शिमला उप क्षेत्रीय कार्यालय, जिसके 80 प्रतिशत से अधिक अधिकारियों/ कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[ फा. सं. ई-11017/1/2016-एडी ( हिंदी-4 ) ]

आनंद कुमार, उप निदेशक ( राजभाषा )

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 10th January, 2017

S.O. 125.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Shimla Sub-Regional Office of the Directorate of Enforcement under the Department of Revenue, where more than 80% staff have acquired working knowledge of Hindi.

[ F. No. E-11017/1/2016-AD (Hindi-4) ]

ANAND KUMAR, Dy. Director (O.L.)

## मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 126.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत निम्नलिखित कार्यालयों को, ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

1. केन्द्रीय विद्यालय, हुमहामा, श्रीनगर,  
जम्मू और कश्मीर - 190007
2. केन्द्रीय विद्यालय,  
भिखीविड, जिला- तरन तारन,  
पंजाब - 143303

[सं. 11011-3/2016-रा.भा.ए.]

सुखबीर सिंह संधु, संयुक्त सचिव

## MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O. L. UNIT)

New Delhi, the 12th January, 2017

**S.O. 126.**—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Human Resource Development, (Department of School Education & Literacy) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi :-

1. Kendriya Vidyalaya, Humhama,  
Srinagar, Jammu and Kashmir - 190007
2. Kendriya Vidyalaya, Bhikhiwind,  
District – Tarn Taran,  
Punjab – 143303

[No. 11011-3/2016-O.L.U.]

SUKHBIR SINGH SANDHU, Jt. Secy.

## स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य और परिवार कल्याण विभाग)

शुद्धि-पत्र

नई दिल्ली, 25 अक्टूबर, 2016

**का.आ. 127.**—इस विभाग की अधिसूचना सं. यू-12012/69/2012-एमई (पी-II) दिनांक 06.11.2012 के अनुक्रम में भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय आयुर्विज्ञान परिषद् से परामर्श करके उक्त अधिनियम की प्रथम अनुसूची में, निम्नलिखित, और संशोधन करती है, अर्थात् :-

उक्त प्रथम अनुसूची में -

(ड) “बुंदेलखण्ड विश्वविद्यालय, झांसी, उत्तर प्रदेश” के समक्ष ‘पंजीकरण के लिए संक्षिप्तिकरण’ कालम (3) शीर्षक के अंतर्गत मास्टर ऑफ सर्जरी (ओटो-रहिनो-लेरिंगोलॉजी) ‘मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी जब यह महारानी लक्ष्मी बाई मेडिकल कॉलेज, झांसी, उत्तर प्रदेश में 1993 की बजाए 1992 अथवा उसके पश्चात प्रशिक्षित किए गए छात्रों को बुंदेलखण्ड विश्वविद्यालय, झांसी, उत्तर प्रदेश द्वारा प्रदत्त होगी।

[सं. यू-12012/473/2015-एमई-I (खंड)]

डॉ. वी. के. राव, अवर सचिव

**MINISTRY OF HEALTH AND FAMILY WELFARE**

**(Department of Health and Family Welfare)**

**CORRIGENDUM**

New Delhi, the 25th October, 2016

**S.O. 127.**—In continuation to this Department’s Notification No. U-12012/69/2012-ME-I (P.II) dated 6.11.2012, and in exercise of the powers conferred by sub-section(2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:-

In the said Schedule –

(e) “against “Bundelkhand University, Jhansi, Uttar Pradesh”, under the heading ‘Abbreviation for Registration’ (column 3), the Master of Surgery (Oto-Rhino-Laryngology) qualification shall be a recognised medical qualification when granted by Bundelkhand University, Jhansi, Uttar Pradesh in respect of students being trained at Maharani Laxmi Bai Medical College, Jhansi, Uttar Pradesh on or after 1992 instead of 1993”.

[No. U-12012/473/2015-ME-I(Pt.)]

D. V. K. RAO, Under Secy.

**उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय**

(उपभोक्ता मामले विभाग)

(भारतीय मानक व्यूरो)

नई दिल्ली, 4 जनवरी, 2017

**का.आ. 128.**—भारतीय मानक व्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक व्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा. मा	भा.ग	अनु	वर्ष
1.	एल- 9512358922	01.09.2016	मै. लक्ष्मी ज्वैलर्स, 180/3, न्यू 531 बी/6, ओल्ड सब्जी मण्डी, मेन सदर बाज़ार, जिला गुडगाँव - 122001, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999

2.	एल- 9512359023	01.09.2016	मै. लक्ष्मी ज्वैलर्स, 180/3, न्यू 531 बी/6, ओल्ड सब्जी मण्डी, मेन सदर बाजार, जिला गुडगाँव – 122001, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	2112	-	-	2014
3.	एल- 9512359124	01.09.2016	मै. शुभदीप स्वर्णकार, बी-778, डबुआ कालोनी, जिला फरीदाबाद – 121001, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999
4.	एल- 9512359217	01.09.2016	मै. शुभदीप स्वर्णकार, बी-778, डबुआ कालोनी, जिला फरीदाबाद – 121001, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	2112	-	-	2014
5.	एल- 9512359520	05.09.2016	मै. सराफ भगवान दास ज्वैलर, शॉप नं 0 1, सेवा समिति कम्पलैक्स, मार्किट नं 0 1, एन आई टी, जिला फरीदाबाद, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999
6.	एल- 9512359621	05.09.2016	मै. सराफ भगवान दास ज्वैलर, शॉप नं 0 1, सेवा समिति कम्पलैक्स, मार्किट नं 0 1, एन आई टी, जिला फरीदाबाद, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	2112	-	-	2014
7.	एल - 9512359722	05.09.2016	मै० सराफ कृष्ण लाल ज्वैलर, शॉप नं 0 5, सेवा समिति कम्पलैक्स, मार्किट नं 0 1, एन आई टी, जिला फरीदाबाद, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999
8.	एल - 9512359823	05.09.2016	मै. सराफ कृष्ण लाल ज्वैलर, शॉप नं 0 5, सेवा समिति कम्पलैक्स, मार्किट नं 0 1, एन आई टी, जिला फरीदाबाद, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	2112	-	-	2014

9.	एल - 9512359924	06.09.2016	मै. भूमित ज्वैलर्स, हनुमान मन्दिर के सामने, मेन बाज़ार, जिला झज्जर - 124103, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं सुहरांकन	1417	-	-	1999
10.	एल - 9512360016	07.09.2016	मै. स्वास्तिक पाईप्स लि0, 41 केएम, दिल्ली रोहतक रोड, वीपीओ असौदा, जिला झज्जर, हरियाणा	अतप्त लघुकृत अल्प कार्बन इस्पात की चादर एवं पत्ती	513	-	-	2008
11.	एल - 9512360622	09.09.2016	मै. डी. आर. इन्टरप्रासिस, पीर वाली गली, मैहम गोहाना रोड, मैहम, जिला रोहतक - 124112, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक्स	15658	-	-	2006
12.	एल - 9512360117	14.09.2016	मै. अशोका ज्वैलर्स, 7/56, मेन मार्किट, अनाज मण्डी चौक के पास, पुराना फरीदाबाद – 121002, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं सुहरांकन	1417	-	-	1999
13.	एल - 9512360218	14.09.2016	मै. अशोका ज्वैलर्स, 7/56, मेन मार्किट, अनाज मण्डी चौक के पास, पुराना फरीदाबाद – 121002, हरियाणा	चौंदी एवं चौंदी मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं सुहरांकन	2112	-	-	2014
14.	एल - 9512360319	14.09.2016	मै. श्री प्रताप ज्वैलर्स, 7/60, मेन मार्किट, अनाज मण्डी चौक, पुराना फरीदाबाद – 121002, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं सुहरांकन	1417	-	-	1999

15.	एल - 9512360420	14.09.2016	मै. श्री प्रताप ज्वैलर्स, 7/60, मेन मार्किट, अनाज मण्डी चौक, पुराना फरीदाबाद - 121002, हरियाणा	चॉर्डी एवं चॉर्डी मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	2112	-	-	2014
16.	एल - 9512360715	14.09.2016	मै. न्यू ब्रांज ज्वैलर्स, 496, सराफा बाज़ार, ज़िला रिवाड़ी - 123401, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999
17.	एल - 9512360521	15.09.2016	मै. एलाइंड सट्रिप्स लि०., 42 केएम स्टोन, दिल्ली रोहतक रोड, बहादुरगढ़, ज़िला झज्जर - 124507, हरियाणा	अतप्त लघुकृत अल्प कार्बन इस्पात की चादर एवं पत्ती	513	-	-	2008
18.	एल - 9512360917	15.09.2016	मै. चित्रा ट्रेडर्स, रोहतक रोड, पुल के पास, ज़िला झज्जर - 124103, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक्स	15658	-	-	2006
19.	एल - 9512362517	15.09.2016	मै. ओम साई एक्वा, प्लॉट नं० .9, श्री कृष्ण परमधाम मन्दिर के पास, ज़िला फरीदाबाद - 121001, हरियाणा	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004
20.	एल - 9512360816	21.09.2016	मै. श्री गोपाल इण्डस्ट्रीस, प्लॉट नं० 1, मौहम्मदपुर इण्डस्ट्रीयल एरिया, सैक्टर - 36, ज़ेबीएम गेट नं. 2 के पास, ज़िला गुडगाँव - 122104, हरियाणा	पोलीविनाइल क्लोराइड से विधुत रोधित अनावरित और आवरित केवल	694	-	-	2010

21.	एल - 9512361616	21.09.2016	मै. डयूरा विल्ड केयर प्रा. लि., प्लॉट नं. 2376, मॉडर्न इण्डस्ट्रीशल इस्टेट, पार्ट बी, बहादुरगढ़, जिला झज्जर ; 124507, हरियाणा	सीमेंट मोर्टर एवं कंक्रीट के लिए एकीकृत जल-सह यौगिक	2645	-	-	2003
22.	एल - 9512361018	22.09.2016	मै. नव शिखा पॉलीपैक इण्डस्ट्रीस प्रा. लि., 174, सैक्टर - 3, फेस - I, आईएमटी बावल, जिला रिवाड़ी, हरियाणा	तप्त और अतप्त पेय जल वितरण व्यवस्था के लिए क्लोरीनकृत पॉलीविनाइल क्लोराइड (सीपीवीसी) पाईप	15778	-	-	2007
23.	एल - 9512361818	22.09.2016	मै. न्यूब ऑयल ब्लैडिंग प्लॉट, गाँव व डाकघर असौटी, जिला पलवल – 121102, हरियाणा	स्वचलित हाइड्रोलिक ब्रेक तरल, भारी ड्यूटी	8654	-	-	2001
24.	एल - 9512361321	23.09.2016	मै. नीरज इन्फ्रा, कोसली रोड, गाँव पलहावास, पलहावास, जिला रिवाड़ी, हरियाणा	ब्लॉक्जे के लिए पूर्व ढलित कंक्रीट ब्लॉक्स	15658	-	-	2006
25.	एल - 9512361119	26.09.2016	मै. मारवाड़ी ज्वैलर्स, बारा हज़ारी रोड, जिला रिवाड़ी – 123401, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ — महीनता एवं मुहरांकन	1417	-	-	1999
26.	एल - 9512361220	26.09.2016	मै. मारवाड़ी ज्वैलर्स, बारा हज़ारी रोड, जिला रिवाड़ी – 123401, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ — महीनता एवं मुहरांकन	2112	-	-	2014
27.	एल - 9512361422	26.09.2016	मै. विनय ज्वैलर्स, शॉप नं 0 12, चूड़ी मार्किट, जैकबपुरा, जिला गुडगाँव - 122001, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999

28.	एल - 9512361515	26.09.2016	मै. जोगिन्दर इन्टरलोकिंग टाइल्स, अशौक विहार कालोनी, जिंद बाई पास, जिला रोहतक - 124001, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक्स	15658	-	-	2006
29.	एल - 9512361717	26.09.2016	मै. कौशिक टाइल एण्ड विल्डिंग मैटीरियल सप्लायर, गोपाल ब्रिक्स कम्पनी के सामने, बीपीओ लाहली, जिला रोहतक - 124113, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक्स	15658	-	-	2006

[सं. सीएमडी-13:11]

सुनील कुमार, वैज्ञानिक एफ एवं प्रमुख

## MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 4th January, 2017

**S.O. 128.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

## SCHEDE

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standard	IS No.	Part	Sec.	Year
1.	L- 9512358922	01.09.2016	M/s Laxmi Jewellers, 180/3, New 531 B/6, Old Sabji Mandi, Main Sadar Bazar,, Distt. Gurgaon - 122001 Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
2.	L - 9512359023	01.09.2016	M/s Laxmi Jewellers, 180/3, New 531 B/6, Old Sabji Mandi, Main Sadar Bazar,, Distt. Gurgaon - 122001 Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
3.	L - 9512359124	01.09.2016	M/s Shubhdeep Swarnkar, B-778, Dabua Colony, Distt. Faridabad – 121001, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
4.	L - 9512359217	01.09.2016	M/s Shubhdeep Swarnkar, B-778, Dabua Colony, Distt. Faridabad – 121001, Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014

5.	L - 9512359520	05.09.2016	M/s Saraaf Bhagwan Dass Jeweller, Shop No. 1, Seva Samiti Complex, Market No.1, NIT, Distt. Faridabad Haryana,	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
6.	L - 9512359621	05.09.2016	M/s Saraaf Bhagwan Dass Jeweller, Shop No. 1, Seva Samiti Complex, Market No.1, NIT, Distt. Faridabad Haryana,	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
7.	L - 9512359722	05.09.2016	M/s Saraaf Krishan Lal Jeweller, Shop No.5, Seva Samiti Complex, Market No.1, NIT, Distt. Faridabad Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
8.	L - 9512359823	05.09.2016	M/s Saraaf Krishan Lal Jeweller, Shop No.5, Seva Samiti Complex, Market No.1, NIT, Distt. Faridabad Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
9.	L - 9512359924	06.09.2016	M/s Bhumit Jewellers, Opp. Hanuman Mandir, Main Bazar, Distt. Jhajjar – 124103, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
10.	L - 9512360016	07.09.2016	M/s Swastik Pipes Limited, 41 Km, Delhi Rohtak Road, VPO Asaudah, Distt. Jhajjar, Haryana	Cold Reduced Low Carbon Steel Sheets and Strips	513	-	-	2008
11.	L - 9512360622	09.09.2016	M/s D.R. Enterprises, Peer Wali Gali, Meham Gohana Road, Meham, Distt. Rohtak – 124112, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
12.	L - 9512360117	14.09.2016	M/s Ashoka Jewellers, 7/56, Main Market, Near Anaj Mandi Chowk, Old Faridabad – 121002, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
13.	L - 9512360218	14.09.2016	M/s Ashoka Jewellers, 7/56, Main Market, Near Anaj Mandi Chowk, Old Faridabad – 121002, Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
14.	L - 9512360319	14.09.2016	M/s Shree Pratap Jewellers, 7/60, Main Market, Anaj Mandi Chowk,, Old Faridabad – 121002,	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999

			Haryana					
15.	L - 9512360420	14.09.2016	M/s Shree Pratap Jewellers, 7/60, Main Market, Aanaj Mandi Chowk,, Old Faridabad – 121002, Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
16.	L - 9512360715	14.09.2016	M/s New Batra Jewellers, 496, Sarafa Bazar, Distt. Rewari – 123401, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
17.	L - 9512360521	15.09.2016	M/s Alied Strips Ltd., 42 Km. stone, Delhi Rohtak Road, Bahadurgarh, Distt. Jhajjar – 124507, Haryana	Cold Reduced Low Carbon Steel Sheets and Strips	513	-	-	2008
18.	L- 9512360917	15.09.2016	M/s Chitra Traders, Rohtak Road, Near Flyover, Distt. Jhajjar – 124103, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
19.	L- 9512362517	15.09.2016	M/s Om Sai Aqua, Plot No.9, Near Shree Krishan Paramdham Mandir , Distt. Faridabad – 121001, Haryana	Packaged Drinking Water (Other Than Packaged Natural Minerals Water)	14543	-	-	2004
20.	L- 9512360816	21.09.2016	M/s Shree Gopal Industries, Plot.No -1, Mohammadpur Industrial Area. Sector-36, NearJBM Gate No-2, Distt. Gurgaon - 122104, Haryana	PVC Insulated Cables for Working Voltage upto and including 1100 V	694	-	-	2010
21.	L- 9512361616	21.09.2016	M/s Dura Build Care Pvt. Ltd., Plot No. 2376, Modern Industrial Estate, Part B, Bahadurgarh, Distt. Jhajjar – 124507, Haryana	Integral Water Proofing Compounds for Cement Mortar Concrete	2645	-	-	2003
22.	L- 9512361018	22.09.2016	M/s Nav Shikha Polypack 174, Sector - 3, Phase-I, IMT Bawal, Distt. Rewari, Haryana	Chlorinated Polyvinyl Chloride (CPVC) Pipes for Potable Hot and Cold Water Distribution Supplies	15778	-	-	2007
23.	L- 9512361818	22.09.2016	M/s Lube Oil Blending Plant, Village & PO Asaoti, Distt. Palwal – 121102, Haryana	Automotive Hydraulic Brake Fluid, Heavy Duty	8654	-	-	2001
24.	L- 9512361321	23.09.2016	M/s Neeraj Infra, Kosli Road, Village Palhawas, Pelhawas,	Precast Concrete Blocks for Paving	15658	-	-	2006

			Distt. Rewari, Haryana					
25.	L - 9512361119	26.09.2016	M/s Marwari Jewellers Bara Hajari Raod, Distt. Rewari – 123401, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
26.	L- 9512361220	26.09.2016	M/s Marwari Jewellers Bara Hajari Raod, Distt. Rewari – 123401, Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
27.	L- 9512361422	26.09.2016	M/s Vinay Jewellers, Shop No 12, Churi Market, Jacobpura, Distt. Gurgaon – 122001, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
28.	L- 9512361515	26.09.2016	M/s Jogender Interlocking Tiles, Ashok Vihar Colony, Jind Bye Pass, Distt. Rohtak – 124001, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
29.	L- 9512361717	26.09.2016	M/s Kaushik Tile & Building Material Supplier, Opp. Gopal Bricks Company, VPO - Lahli, Distt. Rohtak – 124113, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006

[No.CMD/13:11]

SUNIL KUMAR, Scientist F &amp; Head

नई दिल्ली, 4 जनवरी, 2017

**का.आ. 129.—**भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

### अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम व पत्ता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद करने की तिथि
01	एल-9907301	मै. एस. के. वैवरेजिस, 35, माइलस्टोन, गाँव गदर्हपुर, पटौदी, जिला गुडगाँव, हरियाणा	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	09.09.2016

[सं. सीएमडी-13:13]

सुनील कुमार, वैज्ञानिक एफ एवं प्रमुख

New Delhi, the 4th January, 2017

**S.O. 129.**—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

### SCHEDULE

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
01	L-9907301	M/s S.K. Beverages, 35, Mile Stone, Village Gadaipur, Pataudi, Distt. Gurgaon Haryana	Packaged Drinking Water (Other Than Packaged Natural Minerals Water)	09.09.2016

[No.CMD/13:13]

SUNIL KUMAR, Scientist F &amp; Head

नई दिल्ली, 4 जनवरी, 2017

**का.आ. 130.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (4) के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:-

### अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पत्ता	भारतीय मानक का शीर्षक	भा.मा	भाग	अनु	वर्ष
1.	एल- 9512357120	01.08.2016	मै. पंजाब जेनेरल इण्डस्ट्रीस प्रा. लि., प्लॉट नं. 149-150, सैक्टर - 24, जिला फरीदाबाद हरियाणा	गढ़ाईयों के लिए कार्बन इस्पात के बिल्लेट, ब्लूम, सिलियाँ एवं छड़े	1875	-	-	1992
2.	एल- 9512358417	01.08.2016	मै. ग्रिंड इण्डिया पावर केवल्स प्रा. लि., प्लॉट नं. 63, सैक्टर - 5, आईएमटी मानेसर, जिला गुडगाँव - 122001, हरियाणा	वायवीय गुच्छित केवल 1100 वोल्ट तक और सहित की कार्यवारी वोल्टता के लिए	14255	-	-	1995
3.	एल- 9512356918	02.08.2016	मै. लाला दालचन्द जैलर्स, चूड़ी वाली गली, नया बाज़ार, जिला गुडगाँव, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999
4.	एल- 9512356817	03.08.2016	मै. आर आर जैलर्स, मेन चौक, अटेली मण्डी, जिला महेन्द्रगढ़ - 123021, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999

5.	एल- 9512357019	03.08.2016	मै. राजसन्स ज्वैलर्स, गनेश मार्किट के पास, रेलवे रोड, जिला रोहतक - 124001, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं सुहरांकन	1417	-	-	1999
6.	एल- 9512357221	04.08.2016	मै. हुडा इन्टरलोकिंग टाइल्स, गाँव धुसकानी, डाकघर - खिदवेल, जवाहर नवोदया स्कूल के पास, जिला रोहतक - 124001, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक	15658	-	-	2006
7.	एल - 9512357423	04.08.2016	मै. अंकुर फायर सिस्टम एण्ड कन्सलटेंट्स, 1134, सैक्टर - 8, जिला फरीदाबाद - 121006, हरियाणा	ए. बी. सी. क्लास अग्नि शमन के लिए शुष्क रसायनिक पाउडर	14609	-	-	1999
8.	एल - 9512357617	04.08.2016	मै. जे एल वायरस एण्ड केबल्स, 611, उत्तम नगर, जिला रिवाड़ी - 123401, हरियाणा	पोलीविनाइल क्लोराइड से विधुत रोधित अनावरित और आवरित केबल	694	-	-	2010
9.	एल - 9512357322	05.08.2016	मै. एच सी ज्वैलर, दिल्ली रोहतक रोड, सदर थाना के पास, बहादुरगढ़, जिला रोहतक, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं सुहरांकन	1417	-	-	1999
10.	एल - 9512357524	05.08.2016	मै. श्री साई नाथ इन्टरप्राइसिस, गाँव बमबार, धारूहेड़ा, जिला रिवाड़ी - 123401, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक	15658	-	-	2006
11.	एल - 9512357718	11.08.2016	मै. श्री कृष्णा कन्सट्रक्शन, गाँव एस शाहपुर, पटौदी जिला गुडगाँव - 122414, हरियाणा	खड़ंजे के लिए पूर्व ढलित कंक्रीट ब्लॉक	15658	-	-	2006

12.	एल - 9512358518	11.08.2016	मै. मोर्या उद्योग लि., सोहना रोड, सैकटर - 25, गौद्धी ऑक्ट्राय पोस्ट के पास, जिला फरीदाबाद - 121004, हरियाणा	अल्प दाव द्रवणीय गैसों के लिए 5 लिटर से अधिक जल क्षमता वाले वैलिड अल्प कार्बन इस्पात के सिलिंडर भाग 2: एल पी जी के अलावा द्रवणीय अविधातु गैसों के लिए	3196	02	-	2006
13.	एल - 9512357819	16.08.2016	मै. सोनिका ज्वैलर्स, शॉप नं. 2086, 22 फुट रोड, एस जी एम नगर, जिला फरीदाबाद, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999
14.	एल - 9512357920	16.08.2016	मै. सोनिका ज्वैलर्स, शॉप नं. 2086, 22 फुट रोड, एस जी एम नगर, जिला फरीदाबाद, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	2112	-	-	2014
15.	एल - 9512358021	16.08.2016	मै0 सोनी सन्स स्वर्णकार, शॉप नं. 62, सब्जी मण्डी, मार्किट नं0 5, एनआईटी, जिला फरीदाबाद, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999
16.	एल - 9512358122	16.08.2016	मै. सोनी सन्स स्वर्णकार, शॉप नं. 62, सब्जी मण्डी, मार्किट नं. 5, एनआईटी, जिला फरीदाबाद, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	2112	-	-	2014
17.	एल - 9512358223	16.08.2016	मै. निखिल ज्वैलर्स, आर्य समाज रोड, नई सब्जी मण्डी, जिला रिवाड़ी, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999

18.	एल - 9512358324	16.08.2016	मै. दीप ज्वैलर्स, नाहरा नाहरी रोड, स्टेट बैंक ऑफ इण्डिया , बहादुरगढ़, जिला झज्जर - 124507, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999
19.	एल - 9512359318	17.08.2016	मै. एस जी कन्ट्रोल एण्ड स्विचिंगर प्रा. लि., प्लॉट नं. 319, सैक्टर - 7, फेस - II, आईएमटी, मनेसर, जिला गुडगाँव, हरियाणा	कन्डशूटस फॉर इलैक्ट्रीकल इन्टालेशंस भाग 3: रिजिड प्लेन कन्डशूटस ऑफ इन्स्लेटिंग मैटिरियलस	9537	03	-	1983
20.	एल - 9512358619	26.08.2016	मै. सोनी ज्वैलर्स, शॉप नं. 5 के - 40, एनआईटी, जिला फरीदाबाद, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999
21.	एल - 9512358720	26.08.2016	मै. सोनी ज्वैलर्स, शॉप नं. 5 के - 40, एनआईटी, जिला फरीदाबाद, हरियाणा	चॉदी एवं चॉदी मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	2112	-	-	2014
22.	एल - 9512358821	26.08.2016	मै. फोनिक्स इण्डस्ट्रीज, 3-माइलस्टोन पटौदी रोड, राधा स्वामी सतसंग भवन के पास, जिला गुडगाँव - 122001, हरियाणा	सुवाहय अग्नि शामक कार्यकारिता और निर्माण	15683	-	-	2006
23.	एल - 9512359419	26.08.2016	मै. एफटीसी स्विचिंगर प्रा. लि., 1604, एमआई., भाग - बी, बहादुरगढ़, जिला झज्जर - 124507, हरियाणा	1000 वो. ए सी अथवा 1500 वो. डी सी से अनधिक बोल्टता के लिए अल्प बोल्टता फ्यूज़	13703	02	01	1993

[सं. सीएमडी-13:11]

सुनील कुमार, वैज्ञानिक एफ एवं प्रमुख

New Delhi, the 4th January, 2017

**S.O. 130.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule :

**SCHEDULE**

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standard	IS No.	Part	Sec.	Year
1.	L-9512357120	01.08.2016	M/s Punjab General Industries Pvt. Ltd., Plot No.149-150, Sector - 24, Distt. Faridabad Haryana	Carbon Steel Billets, blooms, Slabs and Bars for forgings	1875	-	-	1992
2.	L-9512358417	01.08.2016	M/s Grid India Power Cables Pvt. Ltd., Plot No. 63, Sector-5, IMT Manesar, Distt. Gurgaon – 122001, Haryana	Aerial Bunched Cables for Working Voltages upto and including 1100 Volts	14255	-	-	1995
3.	L-9512356918	02.08.2016	M/s Lala Dalchand Jewellers, Churi Wali Gali, Naya Bazaar, Distt. Gurgaon, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
4.	L-9512356817	03.08.2016	M/s R.R. Jewellers, Main Chowk, Ateli Mandi, Distt. Mahendragarh ; 123021, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
5.	L-9512357019	03.08.2016	M/s Rajsons Jewellers, Near Ganesh Market Railway Road, Distt. Rohtak ; 124001, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
6.	L-9512357221	04.08.2016	M/s Hooda Interlocking Tiles, Village - Ghuskani, Post Office - Khidwail Near Jawahar Novodya School, Distt. Rohtak - 124001, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
7.	L-9512357423	04.08.2016	M/s Aankur Fire Systems & Consultants, 1134, Sector - 8, Distt. Faridabad -121006, Haryana	Dry Chemical Powder for Fighting A, B, C Class Fires	14609	-	-	1999
8.	L-9512357617	04.08.2016	M/s J.L. Wires & Cables, 611, Uttam Nagar, Rewari- 123401, Haryana	PVC Insulated Cables for Working Voltage upto and including 1100 V	694	-	-	2010
9.	L-9512357322	05.08.2016	M/s H.C. Jeweller, Delhi-Rohtak Road, Near Sadar Thana, Bahadurgarh, Distt. Rohtak, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999

10.	L-9512357524	05.08.2016	M/s Shree Sai Nath Enterprises Village Bambar Dharuhera, Distt. Rewari - 123401, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
11.	L-9512357718	11.08.2016	M/s Shri Krishna Construction, Village S.Shahpur, Pataudi, Distt. Gurgaon - 122414, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
12.	L-9512358518	11.08.2016	M/s Mauria Udyog Ltd., Sohna Road, Sector 25, Near Gounchi Octroi Post, Faridabad – 121004, Haryana	Welded Low Carbon Stee; Cylinders 5 Litre Water Capacity for Low Pressure Liquefiable Gases Part 2: Cylinders for Liquefiable Non-Toxic Gases Other than LPG	3196	02	-	2006
13.	L-9512357819	16.08.2016	M/s Sonika Jewellers, Shop No.2086, 22 Foot Road, S.G.M. Nagar, Faridabad, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
14.	L-9512357920	16.08.2016	M/s Sonika Jewellers, Shop No.2086, 22 Foot Road, S.G.M. Nagar, Distt. Faridabad, Haryana	Silver and Silver Alloys Jewellery/Artefacts - Fineness and Marking	2112	-	-	2014
15.	L-9512358021	16.08.2016	M/s Soni Sons Swarnkar, Shop No. 62, Subji Mandi, Mkt. No. 5, NIT, Distt. Faridabad, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
16.	L-9512358122	16.08.2016	M/s Soni Sons Swarnkar, Shop No. 62, Subji Mandi, Mkt. No. 5, NIT, Distt. Faridabad, Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
17.	L-9512358223	16.08.2016	M/s Nikhil Jewellers, Arya Samaj Road, Near New Sabzi Mandi, Rewari, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
18.	L-9512358324	16.08.2016	M/s Deep Jewellers, Nahra- Nahri Road, Near State Bank Of India , Bahadurgarh, Distt. Jhajjar - 124507, Haryana	Gold and Gold Alloys Jewellery/Artefacts – Fineness and Marking	1417	-	-	1999
19.	L-9512359318	17.08.2016	M/s S.G. Control & Switchgear Pvt. Ltd., Plot No. 319, Sector-7, Phase-II, IMT, Manesar, Distt. Gurgaon, Haryana	Conduits for Electrical Installations Part 3: Rigid Plain Conduits of Insulating Materials	9537	03	-	1983
20.	L-9512358619	26.08.2016	M/s Soni Jewellers, SHOP NO 5K -40, NIT, Distt. Faridabad, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999

21.	L-9512358720	26.08.2016	M/s Soni Jewellers, SHOP NO 5K -40, NIT, Distt. Faridabad, Haryana	Silver and Silver Alloys Jewellery/Artefacts – Fineness and Marking	2112	-	-	2014
22.	L-9512358821	26.08.2016	M/s Phonix Industries, 3-Milestone, Pataudi Road, Near Radha Swami Satsang Bhawan, Distt. Gurgaon - 122001, Haryana	Portable Fire Extinguisher Performance and Construction	15683	-	-	2006
23.	L-9512359419	26.08.2016	M/s FTC Switchgear Pvt. Ltd., 1604, M.I.E., Part-B, Bahadurgarh, Distt. Jhajjar - 124507, Haryana	Low Voltages Fuses for Voltages Not Exceeding 1000 V AC or 1500 V DC Part 2: Fuses for use by Authorized Persons Sec. 1: Supplementary Requirements	13703	02	01	1993

[No.CMD/13:11]

SUNIL KUMAR, Scientist F &amp; Head

नई दिल्ली, 4 जनवरी, 2017

**का.आ. 131.—**भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है:-

### अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल	लाइसेंसधारी का नाम व पत्ता	लाइसेंस के अन्तर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
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शून्य

[सं. सीएमडी-13:13]

सुनील कुमार, वैज्ञानिक एफ एवं प्रमुख

New Delhi, the 4th January, 2017

**S.O. 131.—**In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

### SCHEDULE

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
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Nil

[No.CMD/13:13]

SUNIL KUMAR, Scientist F &amp; Head

## श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 132.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स रिलाइन्स लाइफ इंश्योरेंस कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 126/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.12.2016 को प्राप्त हुआ था।

[सं. एल-17012/21/2015-आईआर (एम)]

राजेश कुमार, अवर सचिव

## MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 10th January, 2017

**S.O. 132.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 126/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Reliance Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 28.12.2016.

[No. L-17012/21/2015-IR (M)]

RAJESH KUMAR, Under Secy.

## ANNEXURE

## CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

ID. No. 126/15

Sh. Narendra Kumar,  
S/o sh. Bhanwar Singh,  
R/o H. No. 553, Gandhi Nagar,  
Roorkee, Distt. Haridwar (UK),  
Haridwar (Uttarakhand).

## Versus

The Chief HR,  
Reliance Life Insurance Co. Ltd.,  
At-Ist Floor Dhirubhai Ambani knowledge City,  
Navi Mumbai, Maharashtra,  
Maharashtra-400710.

## No DISPUTE AWARD

The Central Government in the Ministry of Labour vide letter No. L-17012/21/2015-IR(M) dated 21.07.2015 referred the following industrial Dispute to this tribunal for adjudication :-

“Whether the action of the management of Reliance Life Insurance Co. Ltd., Mumbai, was erroneous in terminating the services solely on the basis of unilateral performance appraisal without affording any natural justice? If so, what remedy lies to the workman.”

On 26.10.2015 reference was received in this tribunal. Which was register as I.D No.126/2015 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement / Response to the reference.

In this background there is no option to this tribunal except to pass No Dispute Award because parties are not interested to file their respective pleadings.

On the basis of which none of the party can be directed to adduce its evidence.

No Dispute Award is accordingly passed.

Dated:-24.10.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 133.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दि इम्प्लाइज राज्य बीमा निगम एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 125/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.01.2017 को प्राप्त हुआ था।

[सं. एल-15025/1/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 133.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/2016) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. The Employees Rajya Beema Nigam and other and their workman, which was received by the Central Government on 10.01.2017.

[No. L-15025/1/2017-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 125/2016

Shri Satish Kumar, S/o late Shri Ram Mehar,  
R/o House No.334, Walore, near Mata Chowk  
Post Bahadurgarh, Thana Bahadurgarh,  
Tehsil Bahadurgarh,  
Distract Jhajhar, Haryana

...Workman

#### Versus

1. The Employees Rajya Beema Nigam,  
Regional Dispensary, Near Hakikat Rai Park,  
Jangpura, New Delhi 110 014
2. M/s 2792 V.P. Bhagat Security Agency  
Head Office, 343, Vardhman D.C. Plaza,  
Plot No.7, Sector 11, Dwarka,  
New Delhi 110 075

...Managements

#### AWARD

Shri Satish Kumar (the claimant herein) was employed through M/s V.P. Bhagat Security Agency (hereinafter referred to as the contractor) as Security Guard by Employees State Insurance Corporation (in short the management) on 22.06.2014. On 26.08.2015, while returning home for work, the claimant met with an accident and had to remain on medical leave. Contractors were duly informed about the incident. On 10.09.2015, when the claimant reported for duties alongwith his medical fitness certificate, he was not allowed to join despite repeated requests. Feeling aggrieved, the claimant raised a dispute before the Conciliation Officer seeking reinstatement in service of the Corporation with continuity and full back wages. On expiry of 45 days from the date of moving application before the Conciliation Officer, the claimant raised his dispute before this Tribunal, using provisions of sub-section (2) of section

2A of the Industrial Disputes Act, 1947 (in short the Act). Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Claim statement was filed by the claimant, wherein it is averred that he was engaged by the management through the contractor as a security guard on 22.06.2014 and he was paid Rs.14,700.00 per month as wages. The claimant was made to work for 12 hours instead of 8 hours. Bonus for the year 2014-15 and overtime for the period 30.06.2014 to 25.08.2015 were also not paid. Legal facilities, such as, attendance card, leave card, annual leaves, pay slips, bonus for the year 2014-15, overtime wages for 30.06.2014 to 25.08.2015 etc. were not made available to him. Claimants signatures were forcibly obtained on blank papers and vouchers and threatening them with dire consequences. On 26.08.2015, while returning home from his duty, the claimant met with an accident and had to remain on leave upto 10.09.2016. Though information of his leave was duly conveyed to his employer, he was not allowed to resume duties despite repeated requests and furnishing of medical fitness certificate. Demand notice was sent to the management on 26.10.2015, to which no reply was received by the claimant. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. Thereafter, the case was listed for filing of written statement on behalf of the managements. However, in the meanwhile, it was stated by the contractor that there are chances of settlement, hence parties were persuaded to settle their dispute amicably. Good sense prevailed and the dispute was settled between the parties amicably. In view of the fact that the parties had settled their dispute amicably, there remained no occasion to frame issues/adjudicate the matter on merits.

4. Claimant made a statement to the effect that he was willing to accept Rs.75,000.00 from the contractor towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs.75,000.00 to him, his claim would stand satisfied. Shri Praveen Kumar Singh, Filed Officer and authorized representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs.75,000.00 (Rs.60,000.00 through cheque No.888785 dated 28.12.2016 of Dena Bank and Rs.15,000.00 in cash) to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs.75,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs.75,000/- claim made would stand satisfied. Statement of the claimant as well as Shri Praveen Kumar Singh, Field officer, were recorded separately, which shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : January 5, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 134.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दि इम्प्लाइज राज्य बीमा निगम एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 126/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.01.2017 को प्राप्त हुआ था।

[सं. एल-15025/1/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 134.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 126/2016) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. The Employees Rajya Beema Nigam and other and their workman, which was received by the Central Government on 10.01.2017.

[No. L-15025/1/2017-IR (M)]

RAJESH KUMAR, Under Secy.

## ANNEXURE

## IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 126/2016

Shri Jagdev Singh, S/o late Shri Dayanand,  
 Village – Acheena, Post – Acheena,  
 Thana – Baund Kala, Tehsil – Charkhi Dadri,  
 District - Bhiwani, Haryana

...Workman

## Versus

1. The Employees Rajya Beema Nigam,  
 Regional Dispensary, Near Hakikat Rai Park,  
 Jangpura, New Delhi 110 014
2. M/s 2792 V.P. Bhagat Security Agency  
 Head Office, 343, Vardhman D.C. Plaza,  
 Plot No.7, Sector 11, Dwarka,  
 New Delhi 110 075

...Managements

## AWARD

Shri Jagdev Singh (the claimant herein) was employed through M/s V.P. Bhagat Security Agency (hereinafter referred to as the contractor) as Security Guard by Employees State Insurance(in short the management) in August 2014. He served the principal employer till 31.08.2015. On 01.09.2015, his services were abruptly dispensed with by the contractor on 01.09.2015. Feeling aggrieved, the claimant raised a dispute before the Conciliation Officer seeking reinstatement in service of the Corporation with continuity and full back wages. On expiry of 45 days from the date of moving application before the Conciliation Officer, the claimant raised his dispute before this Tribunal, using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act). Since dispute was within the period of limitation, as enacted by sub section (3), and answered requirements of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute, even without being referred for adjudication by the appropriate Government, under section 10(1) (d) of the Act.

2. Claim statement was filed by the claimant, wherein it is averred that he was engaged by the management through the contractor as a security guard in August 2014 and he was paid Rs.13,000.00 per month as wages. He worked to the entire satisfaction of his superiors and had a clean record of service. Legal facilities, such as, attendance card, leave card, annual leaves, annual increments, pay slips, bonus, overtime wages were not made available to him. On 01.09.2015 when the claimant reported for duties, his services were abruptly done away with, without assigning any reason. Demand notice was sent to the management on 26.10.2015, to which no reply was received by the claimant. He claims reinstatement in service of his employer, the contractor, with continuity and full back wages.

3. Thereafter, the case was listed for filing of written statement on behalf of the managements. However, in the meanwhile, it was stated by the contractor that there are chances of settlement; hence parties were persuaded to settle their dispute amicably. Good sense prevailed and the dispute was settled between the parties amicably. In view of the fact that the parties had settled their dispute amicably, there remained no occasion to frame issues/adjudicate the matter on merits.

4. Claimant made a statement to the effect that he was willing to accept Rs.75,000.00 from the contractor towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. He announced that on payment of Rs.75,000.00 to him, his claim would stand satisfied. Shri Praveen Kumar Singh, Filed Officer and authorized representative of the contractor, unfolded that he was competent to settle the case on behalf of the contractor with the claimant. He undertook, on behalf of the contractor, to pay a sum of Rs.75,000.00 through cheque No.888782 dated 28.12.2016 of Dena Bank to the claimant towards full and final settlement of his claim, made in the present dispute. Thus, it emerged that the contractor agreed to pay a sum of Rs.75,000.00 to the claimant towards full and final settlement of his claim for reinstatement in service, notice pay, retrenchment compensation, gratuity, bonus and other benefits, if any. On payment of a sum of Rs.75,000/- claim made would stand satisfied. Statement of the claimant as well as Shri Praveen Kumar Singh, Field officer, were recorded separately, which shall form integral part of the award. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : January 5, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 135.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 35/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.01.2017 को प्राप्त हुआ था।

[ सं. एल-30011/16/2013-आईआर (एम) ]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 135.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2013) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 10.01.2017.

[No. L-30011/16/2013-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO. CGIT-2/35 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF HINDUSTAN PETROLEUM CORPORATION LTD.

The Director (HR) Personnel  
Hindustan Petroleum Corporation Ltd.  
17, Jamshedji Tata Road  
Mumbai 400 020.

#### AND

#### THEIR WORKMAN

The Joint Secretary  
Maharashtra Rajya Mathadi Transport & General Kamgar Union  
Jivraj Bhanji Shan Market  
3<sup>rd</sup> floor, Near Masjid Station  
Mumbai 400 009.

#### APPEARANCES:

FOR THE EMPLOYER : Mr. L.L. D'Souza, Representative

FOR THE WORKMEN : Mr. M.A. Sheikh, Advocate

Mumbai, dated the 18<sup>th</sup> November, 2016

#### AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-30011/16/2013-IR ( M ), dated 28.05.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

*“Whether the demand of the union for regularisation of the services of listed contract workers (Annex-I, II, III & IV) with effect from their initial date of appointment is legal and justified? If so, what relief the workmen are entitled to?”*

2. After receipt of the reference notices were issued to both parties. In response to the notice, second party union filed their Statement of Claim at Ex-8. Management resisted the Claim of second party by filing their Written Statement at Ex-10. Thereafter matter was fixed for framing of Issues. On 9/11/2016 both parties filed joint

application to take the matter on board. Orders were passed allowing the said application. Both parties filed application (Ex-14) for disposing the Reference as per consent Terms (Ex-15). On 18/11/2016 both the parties remained present along with their representatives. After verification of the documents, orders were passed on Ex-14. Accordingly I pass the following order:

**ORDER**

In view of consent terms (Ex-15), Reference stands dismissed.

Date: 18.11.2016

Sd/-

M. V. DESHPANDE, Presiding Officer

**Ex-15**

**BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, AT MUMBAI**

**Ref. CGIT-2/ 35 of 2013**

**BETWEEN :**

HINDUSTAN PETROLEUM CORPORATION LTD.

...FIRST PARTY

**AND**

THEIR WORKMEN

THROUGH

MAHARASHTRA RAJYA MATHADI TRANSPORT & GENERAL KAMGAR UNION

...SECOND PARTY

**CONSENT TERMS**

1. It is submitted that the parties to the above reference i.e. First party M/s. Hindustan Petroleum Corporation Limited and Second Party i.e. Maharashtra Rajya Mathadi Transport & General Kamgar Union have entered into out of Court Settlement in respect of 28 contract workmen which are covered in present reference represented by the Second party. A detailed list of said 28 contract workmen is detailed in Attachment-1 of the said MOU i.e. out of Court Settlement. A copy of out of Court settlement is annexed hereto and marked as Exhibit-1.

2. It is submitted that though the First Party had no Employer-Employee nexus or relationship with said Contract workmen represented by Second party and thus first party was not liable under any law, in any respect to provide work and payment of any compensation to them. However in order to amicably resolve the present dispute expeditiously the said Out of Court Settlement has been signed between said contract workmen represented by second party and the first party on following terms:

- a) It has been agreed that the first party would continue the services of 28 concerned contract workmen thorough contractor(s) for performing the contractual obligation as its Establishment at HP Nagar Housing Complex (East & West) Mumbai till attaining the age of their superannuation i.e. 60 years save and except misconduct.
- b) It has been agreed that the first party after adhering to the purchase procedures of the Corporation would appoint independent contractors and would specify in the tender conditions the mutually agreed terms for continuation of the said 28 contract workmen under the respective contractors at its Establishment at HP Nagar Housing Complex (East & West) Mumbai for performing the contractual obligations as detailed in the Memorandum of Understanding for Out of Court Settlement.
- c) It has been agreed that second party would withdraw instant reference case pending before this Hon'ble Tribunal in view of the said Out of Court Settlement.
- d) It has been agreed that in the event of indiscipline or misbehavior or any misconduct committed by said 28 contract workmen, the respective contractor engaged at the relevant point of time, would have the right to take disciplinary action including discontinuation of these workmen after adhering to due process of law.
- e) It has been agreed that said 28 contract workmen would be paid an additional fixed allowance of Rs.7020/- p.m. over and above the applicable minimum wages payable in their respective category by the concerned contractors. The aforesaid fixed allowance would be revised on 1<sup>st</sup> January of each calendar year and incremental revision @ 3 % of such additional allowance paid as of 31<sup>st</sup> December of the previous calendar

year would be paid to the contract workmen which would be deemed to be the revised fixed additional allowance for the particular calendar year, subject to minimum attendance of 180 days during the preceding year.

- f) It has been agreed that irrespective of the fact that the respective contractors may be having their independent code under PF, the contribution in respect of said 28 contract workmen would be deposited through the corporation's separate code allotted for the contract labourers engaged across Corporation's locations.
- g) It has been agreed that consequent to the additional fixed allowance of Rs.7020/- per month the said 28 contract workmen would be entitled to receive applicable bonus amount @ 8.33 % of actual wages, irrespective of the fact that the gross wage exceeds Rs.21,000 per month or the limit as declared by the Appropriate Authority under payment of Bonus Act 1965 from time to time.
- h) It has been agreed that since consequent to the payment of additional fixed allowance of Rs.7020/- per month over and above the applicable minimum wages, the said 28 contract workmen would not be entitled for coverage under ESI Act a comprehensive workmen Compensation Policy as well as Medical Insurance Policy would be taken by the Corporation as a Principal Employer on behalf of these workmen for covering them along with their dependent family members (dependent parents, spouse & Children) whereby the contractor as the Employer would contribute an amount equivalent to 4.75% of the wages payable to these workmen and the workmen would contribute 1.75% of their wages which would be deducted from the wages payable to the workmen towards coverage under Comprehensive Medical Insurance Scheme. It has been agreed that till the time such comprehensive insurance policy is being undertaken by the Corporation as the Principal Employer the said 28 contract workmen would continue to be covered under the employees' State Insurance Act and remittance to that effect would be made by the concerned contractors.
- i) It has been agreed that upon attaining the age of superannuation (60 years) the applicable gratuity would be disbursed to the respective contract workmen, for their services through various contractors in the Corporation's location. It is submitted that for the purpose of calculating gratuity, the date of joining the services would be reckoned effective the date of filing of the Writ Petition no.431 of 1997 as detailed in Attachment-1 of the said MOU i.e. Out of Court Settlement.
- j) It has been agreed by the second party as well as the said contract workmen that in future no dispute / claim/ demand of whatsoever nature, monetary or non-monetary shall be raised by them or their members/ workmen before any court of law under issue of permanency/ regularization in the services of the first party.
- k) It has been agreed that said contract workmen agree and undertake to irretrievably forgo their claim for regularization/ permanency in the services of the first party's corporation and or wages at par with regular workmen.
- l) The said contract workmen and the second party have agreed to indemnify and keep indemnified and save harmless the first party, its Directors and Officers from any claim of any nature whatsoever from any of these workmen/ their legal heirs against the first party Corporation.
- m) It has been agreed that the second party as well as the said contract workmen originally covered under Writ Petition 431 of 1997 and common in the instant Reference and shall not cite the said MoU i.e. Out of Court Settlement, arrived at between the parties under the present facts and circumstances of the case in order to amicably resolve the matter, before any competent court of law/ Tribunal/ authority for seeking wages and benefits at par with regular employees or otherwise for present or in future at any stage or in any proceedings involving any other employee/s or contract employees.
- n) It has been agreed and understood by and between the parties that the said 28 contract workmen to whom the benefit of continuity as contract workmen under the respective contractors at the Corporation's Establishment at HP Nagar Housing Complex (East & West) Mumbai has been extended shall not resort to any agitation, stage demonstration/ coercive picketing or indulge in any other act against the Corporation or its Officers affecting the working of the Corporation in support of their any or alleged demands of permanency/ regularization in the employment of the Corporation/ parity of wages along with regular workmen of the Corporation or whatsoever nature and indeed no such demand shall hereinafter be made in future.
- o) It has been agreed that the financial benefits arising out of said settlements would be paid effective 1/4/2011 onwards. However, while calculating the arrears, the incremental revision @ 3% of additional fixed allowance would not be calculated and such incremental revision would be payable with prospective

effect i.e. effective January 2015 onwards.

p) It has been agreed that the benefit accruing out of the settlement entered between the first party and said 28 contract workmen shall be binding as to full and final settlement of all claims/ demands of whatsoever nature as may be conceived under any law arising out of their engagement/ non-engagement in the establishment of the first party through the contractors or otherwise.

3. It is submitted that in view of the settlement arrived at between the parties, second party agree to forgo the claim for regularization and wages at par with regular employees raised the instant Industrial Dispute. The second party also categorically forgo any claim of monetary/ regularization or any other kind of benefit whatsoever nature in instant Reference, save and except the benefits which has been amicably agreed upon in the out of court settlement entered with the concerned 28 contract workmen represented through second party. The second party also forgo the claim and would not pursue the matter in respect of all the contract workmen covered in instant Reference.

4. It is submitted that in view of above, the parties i.e. the First party as well as second party humbly prays that this Hon'ble Tribunal may be pleased to dispose off the present Reference.

Signed on this day of 18<sup>th</sup> November, 2016 at Mumbai.

Advocate of First Party

Sd/-  
(Lancy D'Souza)

For an on behalf of First Party.

Sd/-  
(Surinder Kumar)  
Chief Manager (Admn.)

Sd/-  
(M.A. Shaikh)  
Advocate of Second Party

Sd/-  
(Suresh R. Khond)  
Secretary  
Maharashtra Rajya Mathadi  
Tpt. & General Kamgar Union

### **ORDER**

Surinder Kumar & Suresh R. Khond are present. Both have admitted their signatures on this Consent Terms. They are being indentified by their advocates. Hence read and recorded.

M. V. DESHPANDE, Presiding Officer

#### **Name of contract labour as per List Ex-14.**

1. Smt. Kaushalya C. Patel
2. Smt. Janabai Bhanudas Jogdand
3. Smt. Jaywantibai D. Khunte
4. Smt. Gangubai D. Malagi
5. Smt. Prabhavati Sadanand Nair
6. Shri Kuppammal R. Ajuns
7. Smt. Kashiratnam A. Arjuns
8. Smt. Savitribai Kashinath Bane
9. Shri Dilip D. Ukande
10. Shri Balu Maruthi Phalke
11. Shri Lakshappa B. Yerkali
12. Shri Mangan P. Palani
13. Shri Rajendra A. Kaliyan
14. Shri Kashinath Sakharam Bane
15. Shri Michael S. Nadar
16. Shri G.P. Faras
17. Shri Khaja Hussain Mulla

18. Shri Sahebrao Vitthal Adbale
19. Shri Ramesh Gowda
20. Shri Javre Nigappa Gawda
21. Smt. Hirabai Sitaram More
22. Smt. Kamla Mohan Pol
23. Smt. Laxmibai Lalappa Gajre
24. Shri Santanam Adimulam
25. Smt. Puttajiamma K. Gowda
26. Smt. Mery Anthony Mark
27. Smt. Balan Eknath Kasbe
28. Smt. Laxmi Murgesh Ramaswamy

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 136.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एन. एम.डी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 72/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05. 01.2017 को प्राप्त हुआ था।

[ सं. एल-29011/13/2014-आईआर (एम) ]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 136.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2014) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. N.M.D.C. Ltd. and their workman, which was received by the Central Government on 05.01.2017.

[No. L-29011/13/2014-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/72/2014

General Secretary,  
Bailadila Mine Workers Union (INTUC),  
Bacheli Branch, PO Bacheli,  
Distt. Dantewada  
Chhattisgarh

...Workman/Union

#### Versus

General Manager,  
NMDC Ltd., BIOM. Bacheli,  
Dantewada (CG)

...Management

#### AWARD

Passed on this 7<sup>th</sup> day of December 2016

1. As per letter dated 11-8-2014 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29011/13/2014-IR(M). The dispute under reference relates to:

“Whether the demand of Bailadila Mine Workers Union (INTUC), Bacheli Complex, Distt. Dantewada that the additional two hours time which every worker spend every day for reaching their respective working area in Akash Nagar and Dep.No.5,10and 11 of NMDC Ltd., Bacheli complex should either be included in the duty hours or additional allowance for the tune of 25 % of basic wages should be paid to the workers in lieu thereof is justified or not?”

2. After receiving reference, notices were issued to the parties. Ist party failed to appear in the matter. Despite notices, Ist party failed to appear in the matter. Workman was proceeded ex parte on 20-3-2016.

3. 2<sup>nd</sup> party management filed ex parte Written Statement. 2<sup>nd</sup> party management in its Written Statement has contented that Ist party Union has not filed statement of claim as per Rule 10(B) of ID Central Rules 1957. The contention of the Union that workers at Akash Nagar is to travel 45 kms to reach the working place and back and have to spend 2 hours additionally claiming special allowance. The service conditions are covered by standing orders of NMDC, there is no provision for such special allowance for employees working at Hill Top. That the mechanism of more than 40 years of bipartism system prevailing in NMDC across its project. All India NMDC Workers Federation is operating at corporate level as per its constitution. The system is so effective that the Project has not experienced any major strike on company related issues. The system is unique in India and appreciated by all renowned trade union leaders of the company. The facilities such as conveyance, accommodation etc are given to employees and several other allowances are provided. The amount of perk is limited to 42 % basic pay. Transportation facility from township to respective duty place is provided free of cost. Accommodation facility is provided at nominal charges of Rs./2/- for type II quarter and Rs.149 for Type III quarters in a well maintained township. Facilities such as well maintained community centers, gymnasium, shopping centres, subsidized coaching facilities are provided as a welfare measure to all employees. Considering Bailadila as a hard station Special allowance @ 10 % of basic is given to workmen which is a part of hill allowance. Union raised dispute before ALC, Raipur claiming additional special allowance for spending 2 hours for reaching work place and back. Management has provided various facilities and allowances. The standing orders of NMDC not cover special allowance for employees travelling to the working place. 2 major Unions SKMS and MMWU had reached to the agreement with management regarding payment of special incentive scheme for those who are working in Deposit 5 Hill Top. The employees working there are addressed and resolved for every. Therefore the claimants are not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of Bailadila Mine Workers Union (INTUC), Bacheli Complex, Distt. Dantewada that the additional two hours time which every worker spend every day for reaching their respective working area in Akash Nagar and Dep.No.5,10and 11 of NMDC Ltd., Bacheli complex should either be included in the duty hours or additional allowance for the tune of 25 % of basic wages should be paid to the workers in lieu thereof is justified?	In Negative
(ii) If not, what relief the workmen are entitled to?”	Workmen are not entitled to any relief.

#### REASONS

5. Union has not participated in reference. Statement of claim is not filed. Management filed ex parte Written Statement contending various allowance and facilities to its employees and agreements entered with the major Unions. The affidavit of management's witness Arun Shukla supports full contentions in Written Statement. Evidence of management's witness remained unchallenged. Management has produced memorandum between management and Union Representative dated 11-3-2015. As Union has not participated in reference and evidence of management's witness remained unchallenged, the demand of the Union is not supported by any evidence, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

(1) The demand of Bailadila Mine Workers Union (INTUC), Bacheli Complex, Distt. Dantewada that the additional two hours time which every worker spend every day for reaching their respective working area in Akash Nagar and Dep.No.5,10and 11 of NMDC Ltd., Bacheli complex should either be included in the

duty hours or additional allowance for the tune of 25 % of basic wages should be paid to the workers in lieu thereof is not legal.

(2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 137.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. आई.ओ.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 91/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05. 01.2017 को प्राप्त हुआ था।

[ सं. एल-30012/17/2002-आईआर (एम) ]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 137.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2002) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. M.I.O.L. and their workman, which was received by the Central Government on 05.01.2017.

[No. L-30012/17/2002-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/91/2002

The Secretary,  
Rashtriya Manganese Mazdoor Sangh,  
Bansi Villa Compound, Katol Road,  
Nagpur

...Workman/Union

#### Versus

Chairman-cum-Managing Director,  
M.O.(I) Ltd, 3 Mount Rd.,  
Extension, PO No.34,  
Nagpur

...Management

#### AWARD

Passed on this 8<sup>th</sup> day of December 2016

1. As per letter dated 31-5-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-30012/17/2002-IR(M). The dispute under reference relates to:

“Whether the action of the Sr.Manager(MP), Tirodi Mine of MOIL, Tirodi in terminating the services of Shri Vijendra Mahajan, Piece rated worker of Tirodi Mine of MOIL, Tirodi w.e.f. 29-3-00 is justified? If not, to what relief the workman is entitled?

2. After receiving reference order dated 31-5-02, another reference is received dated 7-2-2003 and was registered as R/49/03. Considering identical reference w.r.t. same workman was made, request was made to the Government for cancellation of either of the reference. As per letter dated 27-7-05, order of reference dated 7-2-2003 pertaining to R/49/03 was treated as cancelled. Therefore R/91/02 only needs to be decided.

3. Workman submitted his statement of claim in R/91/02 challenging legality of the enquiry conducted against him and findings of Enquiry Officer. Workman prayed for his reinstatement.

4. 2<sup>nd</sup> party filed Written Statement which is kept in R/49/03. Management contented that the chargesheet was issued to workman under Clause 29(b)(vii), 29(b)(xii) of the standing orders, enquiry was conducted, Enquiry Officer submitted his report., workman had unconditionally accepted charges. Charges were proved. Considering the findings of Enquiry Officer, punishment was imposed against Ist party workman, the action of the management is legal.

5. After recording evidence of both parties, preliminary issue pertaining to legality of enquiry was answered in favour of workman. Enquiry was found vitiated.

6. Management challenged order of enquiry in Writ Petition No. 16025/2014. The order passed by Hon'ble High Court is received. Both parties submitted before High Court that settlement is arrived between them. The Writ Petition has been disposed off. The workman has filed application for withdrawal of his claim. Management has given no objection. Workman is allowed to withdraw his claim. For above reasons, no dispute award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 138.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स श्री कृष्णादास टीकाराम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 119/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-29012/30/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 138.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/2001) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Shri Krishnadas Teekaram and their workman, which was received by the Central Government on 05.01.2017.

[No. L-29012/30/2001-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/119/2001

Shri Mahant Rai,  
C/o Shri N.K.Pandey,  
Shram Sadhna, West Land Ordnance Factory,  
Katni (MP)

... Workman

#### Versus

M/s. Shri Krishnadas Teekaram,  
Mine Owner, Civil Lines, Katni,  
Post Box 156, Katni (MP)

... Management

#### AWARD

Passed on this 9<sup>th</sup> day of December, 2016

1. As per letter dated 20-6-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-29012/30/2001/IR(M). The dispute under reference relates to:

“Whether the action of M/s Shrikrishna Das Teekaram, Mine Owner, Civil Lines Katni Post Box No. 156, katni (MP) in stopping payment of salary from May 99 and removing workman Shri Mahant Rai from service w.e.f. 19-7-99 is legal and justified? If not to what relief, the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 6/1 to 6/5. Case of Ist party workman is since 1977, he was working on post of Mines Supervisor. Provisions of standing order, ID Act are applicable to the establishment of 2<sup>nd</sup> party. His services were illegally terminated by 2<sup>nd</sup> party from 19-7-99 no chargesheet was issued to him. Any enquiry was not conducted against him, retrenchment compensation was not paid to him before terminating his services. He had sent letter to 2<sup>nd</sup> party by RPAD dated 23-3-99 claiming bonus and pay from the month of November 1998. He was not paid for the year 1995 to 1998. 2<sup>nd</sup> party had given reply to his letter on 29-6-99 claiming that workman was paid bonus for 1995-96 as per bonus sheet signed by him. If any amount was due against the management, its detail be given and receive such dues. Workman has referred to correspondence dated 29-6-99, 8-2-99, 16-7-99 with regard to the payment of bonus and other grievances. His explanation was called about his absence from duty against complaints made against him. Workman reiterates that his service was terminated without enquiry, termination notice was not issued to him, retrenchment compensation was not paid to him. On such ground, workman prayed for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party. 2<sup>nd</sup> party raised preliminary objection as per the workman, he was appointed on permanent post of mine supervisor from 1977. His services were terminated on 19-7-99. Ist party is not covered as workman under Section 2(s) of ID Act as he was doing supervisory work drawing salary Rs.1800 per month. The reference is not tenable and deserves to be dismissed on above ground. It is denied that the workman was illegally terminated. That letter dated 29-6-99 was not issued by management. Management had issued letter dated 19-6-99. Workman had not responded. There was no option but to terminate his services on the basis of irregularities found against him. It is alleged that workman was posted at Argat Mine where he had not reported to duty. Ist party had absconded from duty but to extract money from management he claimed salary and other dues. It is reiterated that Ist party was not attending duty. There were complaints against him. Ist party was unauthorisely absent. Violation of Section 25-F of ID Act is denied. No interference is called for.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the Ist party is covered as workman under Section 2(s) of ID Act?	In Negative
(ii) Whether the action of M/s Shrikrishna Das Teekaram, Mine Owner, Civil Lines Katni Post Box No. 156, katni (MP) in stopping payment of salary from May 99 and removing workman Shri Mahant Rai from service w.e.f. 19-7-99 is legal and justified?	Doesnot survive
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### REASONS

5. 2<sup>nd</sup> party in its Written Statement has contented that Ist party workman was appointed as Mine Supervisor. He was drawing salary Rs.1800 per month is not covered as workman under Section 2(s) of ID Act. Workman in his statement of claim has stated that he was appointed as Mines Supervisor. The appointment letter is produced at Page 6/7. The pay of workman is shown Rs.225/- per month. Workman in his affidavit of evidence has stated that he was appointed as Mines Supervisor. He was in service for 24 years. In his cross-examination, workman admits he was working as supervisor, his monthly salary was more than Rs.1600 per month instead of Rs.1850 per month. Management's witness in his affidavit of evidence however stated that Ist party workman was doing work of labour supervisor, drawing monthly salary more than Rs.1800. said evidence of management's witness is not challenged in his cross examination.

6. Learned counsel for 2<sup>nd</sup> party Miss R.Nair submits that as workman was appointed as Mines Supervisor drawing more than Rs.1600 per month salary is not workman under Section 2(s) of ID Act. In support of her argument, reliance is placed on ratio held in case between—

Young Women's Christian Association of India versus Smt.Jyotsna Paul reported in 2005-LLR-68. His Lordship dealing with Section 2(s) of ID Act laid down factors to be considered for determination as to who is workman or not? Considering the respondents was drawing wages Rs.2176 per month, her specific responsibilities were to

effectively organize and control the food and beverage department. The respondent was not held workman under Section 2(s) of ID Act.

In case between Bharat Heavy Electricals Ltd Ranipur, Haridwar versus State and others reported in 2004LAB-I.C.3600. His Lordship held Petitioner Assistant Foreman doing supervisory work and his salary exceeding Rs.1800 per month is not workman.

In present case, in his pleadings and evidence, Ist party workman has claimed that he was appointed as Mines Supervisory. In his cross, he says he was drawing salary Rs.1850/- per month. Prior to amendment of 2010 of Section 2(s), the salary limit was Rs.1600 per month excluding supervisor from ambit of Section 2(s) of ID Act. For above reasons, I hold that Ist party is not workman under Section 2(s) of ID Act. The issue is answered in Negative.

7. Point No.2- the pleading of parties as well as evidence of workman is clear that his services were terminated for certain irregularities including unauthorised absence without holding enquiry. However Ist party is not workman under Section 2(s) of ID Act. Therefore the reference is not tenable. Point no.2 has become reluctant.

8. Point No.3- In view of my finding in Point No.1 Ist party is not covered as workman under Section 2(s) of ID Act, reference is not tenable, workman is not entitled to any relief. Accordingly I record my finding in Point No.3.

9. In the result, award is passed as under:-

- (1) Ist party is not covered as workman under Section 2(s) of ID Act, reference is not tenable.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 139.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हरी माइन्स ऑफ बिलाई स्टील प्लांट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 34/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-26011/4/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 139.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2002) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hirri Mines of Bhilai Steel Plant and their workman, which was received by the Central Government on 05.01.2017.

[No. L-26011/4/2001-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/34/2002

Smt.Sahodarabai,  
W/o Ramnath, Ex-worker of Hirri Mines of  
Bhilai Steel Plant,  
Opp Hirri Mines,  
Chhattisgarh, Bilaspur

...Workman

#### Versus

M/S Hirri Mines of Bhilai Steel Plant,  
Mines Manager, PO Hirri Mines,  
Bilaspur, Chhattisgarh

...Management

## AWARD

Passed on this 8<sup>th</sup> day of December 2016

1. As per letter dated 12-2-2002 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-26011/4/2001-IR(M), The dispute under reference relates to:

“Whether the action of the management of Hirri Mines of Bhilai Steel Plant, District Bilaspur, Chhattisgarh in terminating the services of Smt. Sahodarabai is justified? If not, to what relief the workman Smt. Sahodarabai is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/2 to 4/6. Case of Ist party workman is that she was working as labour in Hirri Mines under management of 2<sup>nd</sup> party. She had worked for 13 years satisfactorily. Chargesheet was served on her on 24-12-99 for allegation that she beaten employee Tiharu in canteen premises on 13-12-99 at 10 AM and using abusive language. It was also alleged that she along with her husband and her son had beaten Tiharu. Misconduct under Rule 29.1,7,8 of standing order was alleged against her. That she had given reply to chargesheet denying charges against her. That she had given reply to the chargesheet denying charges against her. She contented that she had not abused or beaten Tiharu. That she submitted FIR to police but no action was taken despite she was examined by Doctor and injuries were found on her. That Shri G.M.Rehar was appointed as Enquiry Officer, K.R.Sahu appointed as Presenting Officer. When enquiry was fixed on 13-4-00, she was pressurized by Mine Manager and Presenting Officer to accept charges against her. Because of the pressure by the officers, she was forced to admit charges. Thereafter Enquiry Officer not recorded statement of any witnesses, enquiry was closed. Ist party reiterated that enquiry was not properly conducted on the report of Enquiry Officer, she accepted the charges. She was removed from service as per order dated 22-9-2000. Her husband was also served with separate chargesheet. His two increments were withheld as per order dated 11-7-00. Ist party workman reiterates that enquiry was conducted violating principles of natural justice, punishment of removal from service imposed against her is discriminatory. The action of the management is arbitrary and unfair. On such ground, workman prays for her reinstatement with full backwages. Ist party workman died during pendency. Despite repeated notices, LRs not participated in reference proceeding.

3. 2<sup>nd</sup> party filed Written Statement at Page 8/1 to 8/6 opposing claim of workman. 2<sup>nd</sup> party management submits that Ist party workman was appointed as DPR since 13-6-78. She was in service for 23 years and not 13 years as stated in statement of claim. He denied that service record of workman was satisfactory. Workman was served with chargesheet on 31-12-99. She denied charges against her in reply to the chargesheet. Enquiry was conducted. Workman had admitted charges against her. Enquiry Officer submitted his report. As workman admitted charges against her, charges were established. 2<sup>nd</sup> party denied that workman was pressurised for accepting charges against her. Copy of Enquiry Report was sent to workman, no reply was received. For proved charges, workman was removed from service. complaints were also received against workman from other employees. Punishment is imposed that charges alleged against workman were established. It is denied that action of the management is discriminatory and illegal. The contentions of workman are after thought. The action was taken against workman for misconduct committed by her as per the standing orders. 2<sup>nd</sup> party submits that punishment is legal.

4. As per order dated 13-10-2015, enquiry conducted against workman is found legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

## REASONS

6. The enquiry conducted against workman is found legal. Workman died during pendency of the proceeding. Workman died during pendency of the proceeding. LRs not participated in reference proceeding, documents pertaining to enquiry are produced at Exhibit W-1 to 4. Management has also produced documents at Exhibit M-1 to M-3. In

Enquiry Proceedings, statement of workman was recorded, she had admitted charges alleged against her. The charges alleged against workman had beaten co-employee and used abusive language are admitted by workman in Enquiry Proceedings. As such charges alleged against workman are proved from evidence in Enquiry Proceedings. Therefore I record my finding in Point No.1 in Affirmative.

7. Point No.2- The punishment of removal is imposed against workman for charges proved in Enquiry Proceedings. Charges proved against workman pertains to beating Tiharu on 13-12-99 using abusive language. The proved misconduct is of serious nature. Therefore punishment of removal imposed against workman cannot be held disproportionate. To proved misconduct, no interference in imposing punishment imposed against workman is justified. For above reasons, I record my finding in Point No.2 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Hirri Mines of Bhilai Steel Plant, District Bilaspur, Chhattisgarh in terminating the services of Smt. Sahodarabai is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 140.**—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार आौद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 22/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-30011/16/2010-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 140.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2010) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 05.01.2017.

[No. L-30011/16/2010-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated : the 23<sup>rd</sup> day of September, 2016

#### INDUSTRIAL DISPUTE L.C. No. 22/2010

#### Between:

The President,  
ONGC (K.G.Asset) Mechanical Maintenance  
Workers Union, D.No.76-6-11/2, Gandhipuram-2,  
Rajahmundry

...Petitioner

#### AND

1. The Dy. General Manager,  
ONGC Ltd., Krishna Godavari Project,  
Godavari Bhavan, Base Complex, (A.P.),  
Rajahmundry – 533106.

2. The General Manager (HR),  
 ONGC Ltd.,  
 K.G. Asset, Godavari Bhavan,  
 Rajahmundry

...Respondents

**Appearances:**

For the Petitioner : President, ONGC (K.G.Asset) Mechanical Maintenance Workers Union

For the Respondent : None

**AWARD**

The Government of India, Ministry of Labour by its order No. L-30011/16/2010-IR(M) dated 19.8.2010 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of ONGC Ltd., and their workmen. The reference is,

**SCHEDULE**

“Whether the action of the management of ONGC Ltd., Rajahmundry and its contractor M/s. Sai Tech Central Technical Servicing Industrial Co. Operative Society Limited, Rajahmundry in terminating the services of 24 contract workers (As per list enclosed) is legal and justified? To what relief the concerned workmen are entitled?”

The reference is numbered in this Tribunal as I.D. No. 22/2010 and notices were issued to the parties concerned.

2. The Petitioner Union has filed their claim statement and Respondents failed to file their respective counter statement.

3. The case stands posted for recording Petitioner's evidence.

4. Inspite of availing several opportunities to adduce evidence, the Petitioner union remained absent and there is no representation on behalf of the Petitioner union, which clearly indicates that the dispute of the Petitioner union has already been settled. In the circumstances stated above, it is felt that the Petitioner union has got no claim to raise. Thus, 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 23<sup>rd</sup> day of September, 2016.

MURALIDHAR PRADHAN, Presiding Officer

**Appendix of evidence**

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 141.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एफ. ए.सी.ओ.आर. एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 01/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-29011/28/87-डी. III (बी)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 141.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. FACOR and other and their workman, which was received by the Central Government on 05.01.2017.

[No. L-29011/28/87-D.III (B)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

##### Tr. INDUSTRIAL DISPUTE CASE NO. 01/2001

No. L-29011/28/87-D.III (B), dated 05.10.1987

**Date of Passing Order – 2<sup>nd</sup> November, 2016**

##### Between:

1. The Chief Executive of Mines, FACOR,  
P.O. Dhanurjayapur, Dist. Keonjhar, (Orissa).
2. M/s. Agrawal Brothers, Contractor of FACOR,  
C/o. The Mines Manager, Boula Chromite Mines  
of FACOR, Po. Dhanurjayapur,  
Dist. Keonjhar, (Orissa) ...1<sup>st</sup> Party-Managements

##### (And)

The General Secretary,  
B.Z.C.M.L. Union, Po. Dhanurjoypur,  
Dist. Keonjhar ...2<sup>nd</sup> Party-Union

##### Appearances :

Shri P.K. Sahoo, Law Officer	... For the 1 <sup>st</sup> Party-Management No. 1
None	... For the 1 <sup>st</sup> Party-Management No. 2
None	... For the 2 <sup>nd</sup> Party-Union

#### ORDER

Representative of the 1<sup>st</sup> Party-Management is present. None appears on behalf of the 2<sup>nd</sup> party-Union on repeated calls. No step is also taken on behalf of the 2<sup>nd</sup> party-Union. Heard the representative of the 1<sup>st</sup> Party-Management who submitted for return of reference on the ground of failure of the 2<sup>nd</sup> party-Union as well as the Government of India in the Ministry of Labour to furnish the list of 885 under-ground workmen who are stated to have been refused employment by the 1<sup>st</sup> Party-Management with effect from 17.3.1986.

2. Perused the Schedule of the reference, statement of claim submitted by the 2<sup>nd</sup> party-Union, written statement of the 1<sup>st</sup> Party-Management, the order of the Hon'ble High Court dated 3.2.2014 arising of W.P.(C) No 14329/2006, order dated 08.09.2006 of this Tribunal and other connecting papers including various orders passed by this Tribunal from time to time. It is seen from the record that the reference with the Schedule “whether the action of the management of M/s. Agrawala Brothers, Contractor of Boula Chromite Mines of FACOR in refusing employment to 885 under-ground workers with effect from 17.3.1986 is lawful and justified? If not, what relief the workmen are entitled to” made by the Government of India in the Ministry of Labour in exercise of the powers conferred under sub-section 2-A of Section 10 after failure of the conciliation between the parties on a dispute raised by the 2<sup>nd</sup> party-Union is pending for adjudication for the last 30 years and no progress seems to have been made for taking evidence of the parties in support of their respective claim after settlement of issues on 02.04.1993. The reference is pending without adjudication on account of failure on the part of the 2<sup>nd</sup> party-Union as well as the Central Government to furnish the

details of 885 workmen who are stated to have been refused employment by the 1<sup>st</sup> Party-Management on 17.3.1986. In its order dated 29.12.1995 the parties more particularly the Central Government was directed to ascertain all necessary particulars in respect of 885 workmen and to confirm in writing that the workmen are employed and being identified since identification remains a matter of doubt and, any award, if passed will be either un-implementable or the benefit of the award will be reaped by the fake persons who are not worthy of it. In either case it will occasion failure of justice. The appropriate government was given time till 31.1.1996 to comply the direction of the Tribunal. Despite such an order the Central Government failed to furnish the complete list of 885 workmen so also the 2<sup>nd</sup> party-Union and on 8.9.2006 this Tribunal taking the above matter and submissions advanced by the parties into consideration passed an order that while making the reference the Central Government primarily asked to examine the action of the Management in terminating the under-ground workers numbering 885. Therefore, as secondary requirement the Tribunal asked for a list of those workers for their due identification as a matter ancillary to the main issue and directed the parties to come ready to adduce their evidence on the prime question relating to the action of the Management in terminating the services of the disputant-workmen as the reference can be answered without identification of the workmen. The Tribunal directed the parties to produce their documents, if any in regard to the identity of the workers and also directed the Management of FACOR to produce certain documents like muster roll etc. from which the identity of the disputant workmen can be ascertained. The Management preferred a Writ against such order vide W.P.(C) No. 14329/2006 before the Hon'ble High Court of Orissa. While disposing the writ the Hon'ble Court have observed that in absence of details of 885 workmen, reference cannot be answered by the Tribunal by adjudicating the same and it will be a futile exercise.

3. In spite of such order being passed on 3.2.2014 neither the 2<sup>nd</sup> party-Union nor the Central Government has furnished the list of disputant-workmen. In the meantime seven to eight adjournments have already been given and the reference cannot be allowed to linger in such a manner for an indefinite period. Further it can be noticed that the 2<sup>nd</sup> party-Union is not taking any steps. In the above back-drops keeping in view the observations made by the Hon'ble High Court the Tribunal has no alternative than to return the reference to the Ministry for necessary action at their end.

4. Accordingly the reference case is disposed of.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 142.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस्सेल माइनिंग एण्ड इंडस्ट्रीज लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 59/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-29011/96/2001-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 142.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2002) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Essel Mining and Industries Ltd. and other and their workman, which was received by the Central Government on 05.01.2017.

[No. L-29011/96/2001-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

Tr. INDUSTRIAL DISPUTE CASE NO. 59/2002

**Date of Passing Order – 18<sup>th</sup> November, 2016**

**Between:**

The Agent,  
M/s. Essel Mining & Industries Ltd.,  
At./Po. Barbil, Dist. Keonjhar .....1<sup>st</sup> Party-Management

**(And)**  
Shri Dhabaleswar Mohakud,  
Ore Crushing Unit, Jilling Langlotta Mines,  
P.O. Jajang, Dist. Keonjhar .....2<sup>nd</sup> Party-Workman

**Appearances :**

M/s. S. Pattnaik, Advocate .....For the 1<sup>st</sup> Party-Management  
M/s. Subrat Kr. Mishra, Advocate .....For the 2<sup>nd</sup> Party-Workman

**AWARD**

This award arises out of a reference made by the Government of India in the Ministry of Labour in exercising its authority under sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) with the following Schedule:-

“Whether the action of the Management of Essel Mining & Industries Limited, Jelling Langlotta Mines in dismissing the service of Shri Dhabaleswar Mohakud is justified? If not, to what relief the concerned workman is entitled?”

2. In nutshell facts giving rise to the reference may be stated as follows:-

The 2<sup>nd</sup> party-workman, who was working as a general Mazdoor in the crusher plant of the Management, was issued with a charge-sheet on 11.10.1998 on being charged of talking in slang language with co-employee-Operator Mr. B. Ray against the Management on 28.9.1998 at 9.30 P.M. inside plant while being given “C” Shift duty commencing from 10 P.M. to 6 A.M. of the next day and abusing and slapping Shri Ray and other employees when they persuaded him not to use slang language. He was also charged for giving assault to two security men, when they attempted to take him out of the plant premises on being directed by Shri Satpathy, Assistant Engineer. Allegation was raised in charge-sheet that due to agitation of the workers on account of being slapped by the disputant-workman the production of the plant was interrupted for more than two hours. The charge-sheet was followed by a departmental enquiry in which the workman was found to have committed serious misconduct having assaulted his superiors and other co-workers, which ultimately culminated in dismissal of his service.

3. The 2<sup>nd</sup> party-workman has raised the present industrial dispute taking a stand that he was on “B” shift duty on 28.9.1998 and all the allegations raised in the charge-sheet were false and concocted. Rather, he was abused and assaulted by other employees of the 1<sup>st</sup> Party-Management at the relevant time, day and spot and he sustained bodily injuries. Instead of taking any departmental action against the defaulting employees he had been placed under suspension followed by a departmental enquiry. The enquiry was not conducted with conformity to the principles of natural justice as well as provisions of the Certified Standing Order of the Management. It was not conducted in fair and proper manner in as much as the proceeding was recorded in English and the statement of witnesses and documents exhibited in the proceeding was not explained to him by the enquiry officer. The enquiry proceeding was erroneous having been completed in one day. The proceeding was initiated on personal bias and with vindictive attitude without any preliminary/fact finding enquiry. The findings of the Enquiry Officer were also biased, discriminatory and prejudicial to the interest of the workman. There was no adverse remark or stigma in the service career of the workman. The order of dismissal is unjustified and disproportionate to the gravity of the misconduct. During course of argument contention has also been raised that no subsistence allowance was provided to the workman as a result of which the departmental proceeding is illegal and void ab initio. Prayer has been made for reinstatement of the workman with all back wages and service benefits.

4. Refuting the above allegations the Management has pleaded inter-alia that charge was framed against the disputant workman basing upon allegations made by his fellow employees as on the relevant time, day and place he was stated to have misbehaved, abused and physically assaulted his fellow workmen in the premises of the plant which amounts to a serious misconduct. As his explanation was not satisfactory, a departmental enquiry was held and the same was conducted in fair and proper manner. The workman was given all opportunities to defend himself in the said enquiry. It is the stand of the Management that the workman attended and participated in the enquiry and a co-worker was defending him in the said proceeding. On completion of enquiry he was also issued with the findings of the enquiry officer for giving his explanation on the findings as well as proposed punishment. There was no violation of

principles of natural justice while conducting the enquiry. Having been found guilty of serious misconduct he was duly punished being dismissed from service. The dispute raised by him has no merit.

5. On the aforesaid pleadings of the parties the following issues were settled:-

### ISSUES

1. Whether the Domestic Enquiry conducted against the 2<sup>nd</sup> party-workman was fair and proper?
2. Whether imposition of the punishment of dismissal of the services of the 2<sup>nd</sup> party is justified?
3. To what relief the 2<sup>nd</sup> party-workman is entitled to?

6. It is pertinent to mention here that during course of the proceeding the parties had agreed for hearing on all issues instead of taking the fairness of the departmental enquiry as a preliminary one and accordingly they led their evidence on all the issues.

7. The 2<sup>nd</sup> party has examined himself and exhibited certain documents like copy of letter No. JLIIM/641/98 dated 29.9.1998 of Mines Manager, Jilling Longlata Iron and Manganese Mines of E.M. & S Limited, copy of the letter No. JLIIM/296/98-99, dated 11.10.1998 of Mines Superintendent, Jilling Longlata Iron & Manganese Mines, copy of the letter No. JLIIM/128/99-00, dated 31.5.1999 of Sr. Vice President (Mines), Essel Mining & Industries Limited (marked Ext.-1 to 3, while the Management has examined Shri Ashok Kumar Pattanaik and produced documents like Form-B Register, xerox copy of the shift report, copy of the explanation to the charge-sheet dated 3.12.1998 of the workman, copy of the notice of enquiry dated 20.12.1998, copy of the order-sheet (entire proceeding file of the enquiry), copy of the enquiry report, copy of the letter dated 24.2.1999 forwarding the enquiry to the workman, copy of the representation of the workman on the enquiry report, copy of the Standing Order of the Management and copy of the notice of commencement of work issued by the Mines Manager to the Director (Mines) (marked Ext.-A to K).

### FINDINGS

#### **ISSUE NO. 1**

8. The main plank of the disputant workman is that the enquiry was not conducted in all fairness and proper manner and the same was void ab initio on account of (i) he was not being provided with subsistence allowance, (ii) he was not explained about the proceeding and evidence adduced by the Management in Odiya though the enquiry was recorded in English and (iii) the enquiry was completed in one single sitting in a day. It is appropriate to mention here that no stand has been taken in the statement of claim that subsistence allowance was not provided to the disputant workman pending domestic enquiry inspite of he being placed under suspension on 29.9.1998. In his evidence submitted under Order 18 Rule 4 C.P.C. it is mentioned that subsistence allowances were not paid to him as per rule during the period of suspension. There is nothing specific about the subsistence allowances to which the workman was entitled to as per the rule during the period of his suspension. He has not categorically denied of having received any subsistence allowance. On the other hand, in cross examination the management witness M.W.-1 has asserted that he was paid subsistence allowance though the suspension order was silent in that regard. Further, there is nothing specific either in the pleadings of 2<sup>nd</sup> party-workman or in his evidence that he was substantially prejudiced for not being paid subsistence allowance as per the rule. Admittedly the workman attended the departmental enquiry and cross examined the witnesses in the enquiry. In the above back-drops it cannot be said that the disputant workman was not given proper opportunity to defend himself in the departmental enquiry and the principles set out by the Hon'ble Apex Court in the case between Jagdamba Prasad Shukla – Versus- State of U.P. and other reported in 2000 Supreme Court Cases (L & S) 825 and in the case of State of Punjab and others – versus- K.K. Sharma reported in 2003 Supreme Court Cases (L & S) 18 are apparently in different context as much as on distinguishable to the facts and circumstances of the present case as the disputant workman was provided subsistence allowance.

9. Contention has been raised on behalf of the workman that he was in "B" Shift duty on 28.9.1998. But, charge-sheet was issued alleging that while he was in "C" shift duty he committed the alleged misconduct. Despite his stand that he was in "B" Shift duty and prayer in the departmental proceeding as well as before this Tribunal for production of "B" shift attendance register of the relevant day, the Management failed to cause production of the said attendance register. Such lapse on the part of the Management is sufficient to hold the enquiry defective ab initio. Admittedly, the charge-sheet issued against the workman reveals that the alleged shouting in slang language and assault by the workman was committed while he was in "C" shift duty, whereas in his show cause explanation to the charge-sheet as well as statement of claim filed before this Tribunal the workman has taken a stand that he was in "B" shift duty on the relevant day. A petition was moved before this Tribunal for production of "B" Shift attendance register on the relevant day and despite direction of this Tribunal the Management could not produce the said attendance sheet on a submission that the said attendance sheet was not traceable. It is emerging from the evidence of both the parties that "B" Shift duty is held from 2 P.M. to 10 P.M., whereas "C" shift duty is from 10 P.M. to 6 A.M. It cannot be unnoticed that as per the charge-sheet the alleged incident of slapping and scolding in slang language was taken place at around 9.30 P.M. near

the gate of the plant of the Management. Accordingly it can safely be said that the alleged incident took place before commencement of "C" shift duty near the entrance gate of the plant. No gross mistake or defect cannot be attributed to the charge-sheet on stating that the delinquent workman was in "C" shift duty since as per the claim of the Management he was allotted with "C" shift duty on the relevant day and in that regard "C" shift attendance sheet was produced in the enquiry. Since the "C" shift duty was yet to be commenced and the workman created trouble before commencement of "C" shift duty and he was removed from the plant with assistance of security guards, he was not expected to sign the attendance register. Even if, it is accepted that he was on "B" shift duty, he was not supposed to utter slang abuses and assault his co-employees and the above discrepancy, if any, cannot exonerate him from his misdeeds. It makes no difference when the delinquent workman is alleged to have committed the misconduct in the plant premises. Therefore, no serious error was found to have been committed by the Management for its failure to produce the "B" shift attendance register.

10. The fairness of the departmental enquiry is also challenged on the ground that the proceeding was recorded in English language without the same being explained to the delinquent workman in Oriya even though it was within the knowledge of the enquiry officer that the workman is unable to understand English. No such plea does not seem to have been raised in the departmental proceeding. The termination letter under Ext.-3 and the evidence of the Management including the enquiry proceeding file reveals that the 2<sup>nd</sup> party-workman was issued with second show cause notice along with findings of the enquiry officer seeking his representation, if any. Ext.-3 further reveals that Oriya version of the enquiry report was sent to the workman on his demand. Nothing has been forthcoming from the evidence of the workman that during second show cause notice he pleaded before the Management that he was not explained about the proceeding in Oriya for which he was prejudiced in the departmental proceeding. On the other hand it is emerging from the evidence of the Management witness that the workman was explained in his language during recording of the departmental proceeding. The workman admitted to have submitted his representation on second show cause notice. There is nothing in the said representation to suggest that he challenged the enquiry proceeding on the ground of the same being recorded in English. Hence, it can be stated that the plea is after-thought and he was not prejudiced in the departmental proceeding on the ground of the same being recorded in English.

11. As it emerges from the evidence of the parties as well as the enquiry proceeding file submitted by the Management that the enquiry was held on a single day in which all witnesses were examined on behalf of the Management. But, there is nothing either in the pleading or in the evidence of the disputant workman that he had ever made any request to the enquiry officer to conduct the enquiry in piece-meal or to record the statement of witnesses on different dates so as to enable him to cross examine them properly. No evidence is also forth-coming to show that the disputant workman had made any prayer to the enquiring officer to adjourn the proceeding/enquiry for his preparedness. On the other hand the notice issued to him (Ext.-D) for attending the enquiry proceeding clearly indicates that he was asked to come ready for participating the enquiry including to produce his evidence, if any in the said proceeding. Neither in the enquiry proceeding nor in his statement before this Tribunal the disputant workman has not claimed that inspite of his request the Management or the enquiry officer failed to provide him documents or list of witnesses for which he was prejudiced in the departmental proceeding.

12. Though, a bald allegation has been raised that the charge was not specific as to the misconduct committed by him, mere perusal of the charge-sheet (Ext.- 2) suggest that the allegation of the workman seems to be baseless. Copy of the certified standing order of the Management (Ext.-J) reveals that as per clause – 22 sub-clause (g) drunkenness, fighting, riotous, disorderly and indecent behaviour amounts to misconduct so also causing willful damage to work in progress as contemplated in clause – 22 sub-clause (k). There is no settled principle that the disciplinary authority is required to cite the provisions of its Standing Order that cover the alleged misconduct. On a close reading of the charge-sheet it is crystal clear that the alleged acts of the disputant workman was covered by the act of fighting, riotous, disorderly and indecent behaviour. It is also mentioned in the charge-sheet that the work of the plant was stopped for more than two hours due to such alleged indecent behaviour of the workman which is covered by the misconduct as defined in Clause-22 sub-clause (k). In that view of the matter the pleadings and contentions raised by the disputant workman that he was prejudiced and the departmental enquiry was conducted in violation of principles of natural justice due to unspecific charge and the same being held in a single day is not acceptable.

13. Inspite of raising allegation of biasness and vindictiveness on the part of the enquiry officer no specific instance has been brought either in the oral testimony of the disputant workman or in the cross examination of the management witness to establish that the enquiry officer was not maintaining impartiality or fairness while conducting the enquiry. No specific instance or action has been pointed out to indicate any vindictive attitude of the enquiry officer. Mere reading of the statements given by the departmental witnesses goes to show that the findings of the enquiry officer was not perverse to the conclusion that would have been drawn by a reasonable persons from the materials presented before the enquiry officer. Rather, law is well settled that if the conclusion arrived by the enquiry officer is a possible one of the evidence/materials led before him, the Tribunal cannot substitute its own judgement for the judgement of the enquiry officer even it may come to a different conclusion on the evidence adduced before the enquiry officer. The Tribunal/Labour Court is not supposed to appreciate or re-appreciate the evidence as an appellate forum of the enquiry

officer. It is also coming forth that the disputant workman was provided with the findings of the enquiry officer and asked to submit his say on the proposed punishment before passing of his removal order.

14. Keeping in view the pleading and evidence of the parties more particularly the departmental enquiry proceeding file and discussions made in supra it can be safely said that the Management proceeded against the 2<sup>nd</sup> party-workman informing him the charges leveled against him clearly, the witnesses were examined in his presence in the departmental proceeding in respect of the said charges, the workman was given a fair opportunity to cross examine the witnesses examined in the departmental proceeding, he was given opportunity to examine his witnesses to defend his cause and the enquiry officer was found to have recorded his findings assigning the reasons for such findings. As such the departmental enquiry seems to have been conducted properly and fairly. The same cannot be held defective merely on the ground of being held in a single sitting in a day when the workman fails as to how he was prejudiced due to completion of enquiry in a single day. Accordingly this issue is answered in favour of the 1<sup>st</sup> Party-Management.

### **ISSUE NO. 2 & 3**

15. These two issues being related to each other are taken up together for consideration for sake of convenience.

It has been contended by the learned counsel for the disputant workman that imposed punishment in shape of termination of service is disproportionately, excessive and harassed in comparison to the misconduct allegedly committed by the disputant workman. There was no adverse remark or stigma in the service carrier of the workman and as such lesser punishment should have been inflicted by the Management instead of dismissing the workman from service. Admittedly the charge issued against the disputant workman is silent about his past conduct. It is elicited from the cross examination of M.W.-1 that there was no adverse remark or stigma in the service carrier of the disputant workman prior to the alleged misconduct. The workman was in early thirties when he was dismissed from service. Having regard to the above facts an opportunity could have been provided to the workman to mend himself by inflicting lesser punishment. It is well settled by the Hon'ble Apex Court in a catena of decisions that the Tribunal/Labour Court has discretionary jurisdiction under Section 11-A of the I.D. Act to interfere with the punishment of dismissal where such punishment amounts to highly disproportionate to the misconduct allegedly committed by the workman and such discretionary power shall be exercised judicially and judiciously as under section 11-A of the Act. The court/Tribunal have been vested with wide powers to set aside the punishment of discharge or dismissal or in its place can award any lesser punishment. However, high amount of care and caution is required to be exercised by the Tribunal while invoking the said discretionary jurisdiction for replacing the punishment of discharge or dismissal and such exercise of discretion will have to depend upon the facts and circumstances of each case. Before exercising the said discretion the Tribunal has to necessarily reach a finding that the order of discharge or dismissal was not justified. Coming to the case in hand there is no serious dispute to the fact the disputant workman had no adverse report or stigma and he was only 31 years old at the time of dismissal. It is apparent from the evidence laid before the enquiry officer that the disputant workman misbehaved his co-employees verbally and physically when he was asked to restrain himself from abusing the Management in loud voice and he did not behave in such manner previously. There is no material or evidence before the Tribunal that the workman was in gainfull employment after his dismissal. The punishment of dismissal seems to have deprived him and his family members of the source of livelihood and the employer could have provided an opportunity to the workman with lesser punishment and warned him to maintain utmost discipline in the establishment in order to give him a chance to mend himself. Thus this Tribunal finds the punishment of dismissal without giving another chance to the workman to amend himself and to behave properly in future with infliction of lesser punishment like with-holding annual increments or giving warning or imposing financial punishment seems to be disproportionate excessive and harassed in nature in comparison to the first misconduct committed by the workman. In the meanwhile the workman is sufficiently punished for such alleged misconduct being deprived of employment and monthly wages for last 17/18 years as such the extreme punishment need interference. Hence the misconduct on the part of the workman did not warrant extreme punishment of termination from service and as such, an interference should be made by this Tribunal. Keeping the totality of the case in view, it is just and appropriate to direct the Management to reinstate the workman in service with continuity of service and without any back wages. Such reinstatement should be made within two months from the gazette notification of the award.

16. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 143.—**ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक

विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, अजमेर के पंचाट (संदर्भ संख्या 03/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/8/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 143.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2008) of the Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and their workman, which was received by the Central Government on 05.01.2017.

[No. L-30012/8/2008-IR (M)]

RAJESH KUMAR, Under Secy.

### अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर

पीठासीन अधिकारी—श्री एस.एन. टेलर, आर.एच.जे.एस.

**प्रकरण संख्या— सी.आई.टी.आर. 03/08**

रेफरेंस संख्या— एल.-30012/8/2008-आईआर (एम) दिनांक 02/07/2008

प्रमोद सिंह चौहान पुत्र श्री आर के चौहान जरिये  
सचिव एस सी/एटी एसटी/एसटी महासंघ धोलाभाटा,  
मुख्य मार्ग, अजमेर

...प्रार्थी

### बनाम

क्षेत्रीय प्रबंधक हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड (एलपीजी प्लान्ट)  
ग्राम गादेरी नसीराबाद जिला अजमेर

...अप्रार्थी

### उपस्थिति

प्रार्थी की ओर से : श्री आर सी जैन, प्रतिनिधि

अप्रार्थी की ओर से : श्री डी एन शर्मा, अधिवक्ता।

### अवार्ड

दिनांक 23.11.16

1. केन्द्र सरकार द्वारा इस श्रम न्यायालय को निम्नलिखित विवाद अधिनिर्णय हेतु निर्देशित किया गया है:—

"Whether the action of the management of regional manager HCPL (LPG PLANT) village - GADERI, Nasirabad in terminating the services of Shri Pramod Singh Chouhan w.e.f. 20-01-2007 is just and legal If not, to what relief the workman is entitled to and from which date?"

2. अपने स्टेटमेंट ऑफ क्लेम में प्रार्थी/श्रमिक द्वारा अप्रार्थी के स था अप्रार्थी संख्या 2 के रूप में एम/ओ पेट्रोलियम एंड नैचुरल गैस शास्त्री भवन, नयी दिल्ली को दर्ज करते हुए अभिवचन किए गए हैं कि उसको अप्रार्थी संख्या 2 बिना किसी युक्तियुक्त कारण व सूचना के तथा बिना कोई पूर्व नोटिस दिये तथा उसका पक्ष सुने दिनांक 20.01.2007 को दैनिक वेतन भोगी श्रमिक के पद से सेवा समाप्ति करके मौखिक आदेश देकर सेवा से निष्कासित कर दिया जो विधि विरुद्ध तथा निर्धारित श्रमिक कानून, न्यायिक प्रक्रिया तथा प्राकृतिक न्याय सिद्धान्तों के विपरीत होने से अवैध व गलत है श्रमिक के रूप में कम्प्यूटर टाईपिस्ट का कार्य दैनिक वेतन/मजदूरी रूपये 100/ प्रतिदिन से शुरू होकर 180/ रूपये प्रतिदिन प्राप्त करते हुए दिनांक 20.09.2001 से 20.01.2007 तक कुल सेवा अवधि 4 वर्ष 2 माह 09 दिन उक्त पद पर कार्य करने के बाद दिनांक 30.01.2007 को मौखिक आदेश देकर प्रार्थी/श्रमिक को उक्त दैनिक वेतन पद से हटा दिया प्रार्थी श्रमिक को अप्रार्थी के हिन्दुस्तान गैस प्लान्ट ग्राम कादेरी पासेट आशापुरा जिला अजमेर में 100/ रूपये प्रतिदिन के हिसाब से अप्रार्थी संख्या 2 ने दिनांक 20.09.2011 को कम्प्यूटर टाईपिस्ट कम सहायक लेखा लिपिक पद पर सीधी भर्ती तथा मौखिक आदेश से नियुक्त किया। प्रार्थी श्रमिक प्रमोद सिंह

चौहान, कमल कुमार को साथ साथ नियुक्त किया । साथ ही यह भी आश्वासन नियाजे के अप्रार्थी सं 2 ने दिया कि भविष्य में प्रार्थी श्रमिक को नियमित/स्थायी नौकरी पर निर्धारित वेतन श्रंखला में नियुक्त कर लिया जायेगा तथा जब तक दैनिक वर्ते न समय समय पर बढ़ायी जाती रहेगी । उसी के तहत दैनिक मजदूरी पूर्व में 100 रु फिर 120/- रुपये तथा 150/- रुपये और अन्त में 180/- रुपये रुपये बढ़ाई गई । 90 दिन पूरे होने पर श्रमिकों को कुछ दिन के लिए हटा दिया जाता रहा और कुछ दिन बाद पुनः दैनिक वर्ते न श्रमिक पद पर रख लिया जाता था । प्रार्थी/श्रमिक ने दिनांक 20.09.2001 ये से 19.12.2001 तक 90 दिन दिनांक 20.2.2002 से 19.07.2002 तक 150 दिनांक 20.08.2002 से 19.03.2003 तक 210 दिन दिनांक 20.04.2003 से 01.08.2003 तक 102 दिन दिनांक 01.09.2003 से 01.05.2004 तक 242 दिन दिनांक 11.06.2004 से लगातार 20.01.2007 तक 2 वर्ष 7 माह 15 दिन कुल सेवा अवधि योग 3 वर्ष 11 माह 24 दिन नियमित रूप से कार्य किया । उपस्थिति पंजिका प्रार्थी/श्रमिक तथा उसके साथ कार्यरत अन्य दैनिक वेतन भोगी श्रमिक कमल कुमार दोनों की मोवमेन्ट दर्शाती थी । उपस्थिति पंजिका के अनुसार ही प्रार्थी श्रमिकों का वेतन बनाया जाता था तथा मस्टरोल पर टिकिट लगाकार हस्ताक्षर करवा कर प्रार्थी/श्रमिक को वेतन/मजदूरी का भुगतान किया जाता था । प्रार्थी श्रमिक तथा उनके साथ-साथ काम करने वाले दैनिक वेतन भोगी श्रमिक श्री कमल कुमार जिस कम्प्यूटर पर काम करते थे उसमें कोड गड़ में प्रार्थी का नाम सी सी पी एस सी अर्थात केज्यूएल कलर्क प्रमोद सिंह चौहान तथा जिस कम्प्यूटर पर कमल कुमार काम करता था उसकी टाईपशुदा शीट्स निकलती थी उन पर सी सी के के अर्थात केज्यूल कलर्क कमल कुमार अंकित होता था । क्षेत्रीय प्रबन्धक महोदय, पी एण्ड ए उत्तरी जोन मुम्बई, जो उनसे वरिष्ठ एवं सक्षम अधिकारी है को लिखकर श्री प्रमोद कुमार चौहान, श्री कमल कुमार, श्री सुरेन्द्र सिंह शेखावत तीनों व्यक्तियों हेतु अनुमति तीन कलर्कों के रिक्त पदों की पूर्ति हेतु मांगी थी । हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि. के महाप्रबन्धक महोदय नॉर्थ जोन, हरियाणा ने दिनांक 11.12.2006 को एक सरक्यूलर जारी करके कार्पोरेशन मुगल सराय, वाराणसी, भरतपुर बेतालपुर, बहादुरगढ़ होशियारपुर, लोनी, अजमेर तथा जालान्धर में कार्यरत उन कर्मचारियों से दिनांक 5.1.2007 तक कम्प्यूटर टाईपिस्ट के रिक्त पदों पर नियुक्ति करने हेतु आमन्त्रित किये जिसमें ग्रेज्यूएट साथ में दो वर्ष की सेवा तथा अग्रेजी टाईपिंग जिनकी स्पीड 30 शब्द प्रति मिनट तथा कम्प्यूटर को खोलने व उसके काम का अनुभव भी हो तथा उक्त योग्यता हो । प्रार्थी श्रमिक प्रमोद सिंह चौहान ग्रेज्यूएट होने के साथ साथ दो वर्ष से अधिक समय से उक्त गैस प्लान्ट पर कार्य भी कर रहा था तथा उसे टाईपिंग के साथ साथ कम्प्यूटर टाईपिंग 30 शब्दों से अधिक होने से व योग्य तथा सक्षम प्रत्याशी था । प्रार्थी श्रमिक ने रजिस्टर्ड डाक से प्रार्थना भी भेजे परन्तु उस पर कोई ध्यान नहीं दिया गया । श्रमिक अपनी योग्यता अनुभव तथा तकनीकी शिक्षा उत्तीर्ण होने के बावजूद उसे अनदेखा किया जाकर इस विवाद को पैदा किया गया । नई नियुक्तियां कर पद भर लिये गये । प्रार्थी श्रमिक एक अनुसूचित जाति का शिक्षित कर्मकार होने से उसे नौकरी में आरक्षण का लाभ प्राप्त है । भारत सरकार ने उन्हें नौकरियों में आरक्षण का लाभ प्राप्त है । भारत सरकार ने उन्हें नौकरियों में आरक्षण का लाभ देने के लिये 100 पोईंट रोस्टर लागू किया उसका लाभ भी श्रमिक को नहीं दिया गया जबकि हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि 0 के भारत के विभिन्न कार्यालयों में आज भी आरक्षित पद खाली है आरक्षण कोटा पूरा नहीं होने से वह विधिक रूप से उक्त कारपोरेशन में नौकरी पाने का पात्र है विवाद मियाद में है । न्यायालय को उसे सुनने एवं निर्णित करने का अधिकार प्राप्त है । अप्रार्थी नियोजक द्वारा न तो अपने संस्थान में कोई उपस्थिति रजिस्टर, वरिष्ठता रजिस्टर, रोस्टर रजिस्टर, मजदूरी भुगतान रजिस्टर, कान्ट्रेवर्टर लेबर रजिस्टर आदि कुछ भी संधारित नहीं करके श्रमिक कानूनों औद्योगिक विवाद अधिनियम, 1947 वेतन भुगतान अधिनियम 1936 लेबर कान्ट्रूक्ट एक्ट 1970 का खुले रूप से उल्लंघन करते हुए धार 25(एफ), 25(डी), 25(एम), 25(एन) तथा 25(जी) औद्योगिक विवाद अधिनियम 1947 के विपरित कार्यवाही की है जो विधि विरुद्ध व गलत है संस्थान हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि. एक भारत सरकार का अन्डर टेकिंग संस्थान होने से उस पर उपरोक्त वर्णित कानून तथा केन्द्रीय सरकार के अन्य कानून लागू हैं जिन्हें मानने व पालन करने को वह बाध्य है । अंत में प्रार्थना की गई है कि प्रार्थी श्रमिक को वेतन परिलाभ सहित नियुक्ति का व अन्य अनुतोष जारी किये जावे ।

3. उक्त अप्रार्थी एवं प्रार्थी द्वारा दर्ज अप्रार्थी संख्या 2 एम/ओ पेट्रोलियम एंड नैचुरल गैस शास्त्री भवन, नई दिल्ली द्वारा जवाब स्टेटमेंट ऑफ क्लेम प्रस्तुत कर प्रार्थी के स्टेटमेंट ऑफ क्लेम को मदवार अस्वीकार करते हुए अभिवचन किये गये हैं कि प्रार्थी को अप्रार्थीगण द्वारा कभी नियुक्त नहीं किया गया और ना ही उसने अप्रार्थीगण के यहां अपनी सेवाए ही दी है । ऐसे में उसके द्वारा 240 से अधिक कार्य दिवसों तक कार्य करना नितांत कपाले कल्पित है । प्रार्थी ने फर्जी आरे बनावटी कूटरचित दस्तावजोत अर्थात उपस्थिति पंजिका माननीय न्यायालय के समक्ष प्रस्तुत की है । अप्रार्थीगण द्वारा कोई भी कार्य औद्योगिक तरीके से नहीं किये जाते हैं । अप्रार्थीगण द्वारा कभी भी प्रार्थी के नियुक्ति बावत कोई अनुमति नहीं मार्गी गई । अप्रार्थीगण संस्थान एक भारत सरकार का अप्पराटटेकिंग उपक्रम है और इस संस्थान में भर्ती किये जाने कर्मचारियों व अधिकारियों के लिये पृथक से एक भर्ती प्रक्रिया बनी हुई है जिसमें निर्धारित प्रारूप में आवेदन पत्र स्थीकार किये जाते हैं और उनके स्कूलीनी की जाती है और लिखित परीक्षा आयोजित की जाती है और उसके पश्चात साक्षात्कार लिये जाते हैं और तदुपरात किसी भी कर्मचारी/अधिकारी की नियुक्ति निर्धारित प्रक्रिया अपनाने के बाद की जाती है । अप्रार्थी सरं थान को उनके मुख्यालय से समय पर निर्देश दिये जाते हैं कि आप आकस्मिक जरूरतों के लिये मिसलेनियस हेड में कर्मचारी रख सकते हैं और उसका कर्मकार का यदि कार्य संतोषप्रद हो तो उस व्यक्ति के बारे में सिफारिश की जाती है कि उसकी निमित्त नियुक्ति की

जावे । प्रार्थी को अप्रार्थी संख्या 1 द्वारा कभी कोई नियमित नियुक्ति नहीं दी गई । प्रार्थी ने माननीय न्यायालय के समक्ष अन्य कर्मकार के साथ मिलकर एक मिथ्या, कूटरचित दस्तावेजात उपस्थिति पंजिका तैयार की है उक्त उपस्थिति पंजिका पर अप्रार्थीगण के किसी भी अधिकारी एंव प्रभारी अधिकारी के हस्ताक्षर नहीं हैं आरे ना ही यह उपस्थिति पंजिका अप्रार्थीगण के कार्यालय की है। उसके विरुद्ध भारतीय दण्ड संहिता की धारा 193 सप्तित धारा 340 दण्ड प्रक्रिया सहिता के तहत पृथक से कार्यवाही खोली जावे । अतं में प्रार्थना की है कि प्रार्थी का स्टेटमेंट ऑफ क्लेम मय विशेष हर्जे खर्चे के खारिज फरमाया जावे और प्रार्थी के विरुद्ध जाली दस्तावेजात उपस्थिति पंजिका के बारे में न्यायालय में स्वयं जाचं कर संम्बंधित फौजदारी न्यायालय में इस्तगासा प्रस्तुतु किये जाने के आदेश प्रदान किए जावे ।

4. प्रार्थी द्वारा अपनी साक्ष्य में ए डब.2 बृजमोहन, ए डब.3 स्वयं प्रार्थी प्रमोद को परीक्षित करवाया है जबकि अप्रार्थी की ओर से अप्रार्थी साक्षी एन ए डब.1 के के रौय को परीक्षित करवाया गया है । प्रार्थी की ओर से दस्तावेजी साक्ष्य में प्रदर्श ए 1 लगायत ए 17 दस्तावेज प्रदर्शित करवाये गये हैं । अप्रार्थी की ओर से दस्तावेजी साक्ष्य में प्रदर्श एम-1 लगायत एम-3 दस्तावेज की फोटो प्रतियां प्रस्तुत कर प्रदर्शित करवायी गयी हैं ।

5. बहस अंतिम सुनी गयी । विद्वान प्रतिनिधि प्रार्थी के स्टेटमेंट ऑफ क्लेम के तथ्यों के दोहराव के साथ तर्क रहे हैं कि प्रार्थी अप्रार्थी का श्रमिक होना प्रार्थी की मौखिक व दस्तावेजी साक्ष्य से सिद्ध है । प्रार्थी को बिना कोई मुआवजा दिये व नोटिस दिये, हटाया जाना औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ के विरुद्ध है । प्रार्थी ने लंबे समय तक अप्रार्थी के यहां सेवायें दी हैं वह नियमित किये जाने योग्य था चूंकि प्रार्थी का सेवा से पृथक किया जाना अवैध है अतएव प्रार्थी पूर्व वेतन व भत्तों सहित सेवा में पुर्नस्थापना का पात्र है । अप्रार्थी द्वारा अपने अभिवचनों में प्रार्थी का श्रमिक होने से इंकार किया गया है तथा उनकी आरे से प्रार्थी की नियुक्ति अवैध होने के संबंध में कोई अभिवचन नहीं किये गये हैं तथा प्रकरण में हमेशा बदनीयती पूर्वक आचरण किया गया है । अतएव प्रार्थी को एकमुश्त मुआवजे के बजाय सेवा में पुर्नस्थापित किया जाना विधिपूर्ण व न्यायोचित है । उनके द्वारा अपने तर्कों के समर्थन में निम्नलिखित न्यायिक दृष्टांत भी पेश किये गये हैं:-

- 1-2015 (145) एफ एल आर पेज 425 अजयपाल सिंह बनारम हरियाणा वेयरहाउसिंग कॉरपोरेशन,
- 2-2001 (88) एफ एल आर 741 (एस सी) विक्रमादिया पाड़े बनाम इंडियन ट्रिब्यूनल, लखनऊ व अन्य,
- 3-2003 (3) आर एल डबल्यू (राज0) 1966 स्टेट ऑफ राजस्थान व अन्य बनाम श्री महेंद्र जोशी व अन्य,
- 4-2010 (2) आर एल डबल्यू (एससी) 1586 अनूप शर्मा बनाम एकजीक्युटिव इंजीनियर, पब्लिक हैल्थ डिवीजन नं. 1, पानीपत,

5-(2010) 3 एस सी सी 637 कृष्णसिंह बनाम एकजीक्युटिव इंजीनियर, हरियाणा स्टेट एप्रीकल्चर मार्केटिंग बोर्ड रोहतक,

6-ए आई आर 1979 लैब आई सी 1192 (एस सी) शंकर बनाम ब्रिटानिया बिस्कुट कपंनी,

7-2005 लैब आई सी 2279 बैंक ऑफ बडौदा बनाम घेरमभाई हरजीभाई रेबारी । अतं में उनके द्वारा प्रार्थी के स्टेमटें ऑफ क्लेम में वर्णित अनुतोष जारी किये जाते हुए उक्त विवाद का उत्तर प्रार्थी के पक्ष में दिये जाने की प्रार्थना की गयी है ।

6. विद्वान अधिवक्ता अप्रार्थी द्वारा अपने मौखिक तर्कों में प्रार्थी का अप्रार्थी का श्रमिक होना एवं उसको बिना रिट्रैंचमेंट मुआवजा एवं नोटिस दिये सेवा से पृथक किया जाना स्वीकार किये जाते हुए तर्क दिये गये हैं कि प्रार्थी की नियुक्ति चूंकि अप्रार्थी के नियम व पॉलिसी के विरुद्ध है अतएव प्रार्थी को हद से हद एकमुश्त मुआवजे का अनुतोष दिया जा सकता है । न्यायिक दृष्टांत 2014 एल एल आर 511 संजय कुमार बनाम लेबर कोर्ट एंड इंडिस्ट्रियल ट्रिब्यूनल अजमेर व अन्य के अनुसार ही प्रकरण की स्थिति होने के भी तर्क दिये गये हैं । उनके द्वारा अपने तर्कों के समर्थन में उक्त न्यायिक दृष्टांत के अलावा निम्नलिखित न्यायिक दृष्टांत भी पेश किये गये हैं :-

- 1-2007 एल एल आर 561 पंजाब वॉटर सप्लाई एंड सेवरेज बोर्ड बनाम रनजोध सिंह व अन्य,
- 2-2012 एल एल आर 718 मै. डी एस आई आई डी सी बनाम प्रवीन कुमार शर्मा ।

7. उभयपक्षकारान् के तर्कों के मद्दे नजर उनके द्वारा प्रस्तुत न्यायिक दृष्टांतों के अभिमत एवं संबंधित विधि को विचार में लेते हुए पत्रावली का आद्योपांत गभीरतापूर्वक परिशीलन किया गया ।

8. प्रार्थी की आरे से आयी मौखिक साक्ष्य व दस्तावेजी साक्ष्य से तथा प्रार्थी की ओर से आयी मौखिक साक्ष्य में स्थिर होने से एवं अप्रार्थी की ओर से आयी साक्ष्य से प्रार्थी की मौखिक एवं दस्तावेजी साक्ष्य का खंडन नहीं होने से प्रार्थी द्वारा अपने स्टेटें ऑफ क्लेम में वर्णित समयावधि में अप्रार्थी के यहां श्रमिक के रूप में कंप्यूटर टाइपिस्ट का

दैनिक वर्ते न पर कार्य करना बखूबी साबित होता है तथा इस तथ्य को विद्वान अधिवक्ता अप्रार्थी द्वारा बेहिचक अपने तर्कों में स्वीकार भी किया है । अतः इस बिंदु पर अत्यधिक विवेचन की आवश्यकता नहीं रह जाती है ।

9. प्रार्थी को अप्रार्थी द्वारा सेवा से पृथक किये जाते समय कोई छंटनी भत्ता दिया जाना या नोटिस दिया जाना अप्रार्थी की ओर से अपने अभिवचनों एवं साक्ष्य में नहीं रखा गया है तथा प्रार्थी की ओर से इन आधारों पर प्रार्थी को सेवा से पृथक किया जाना औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ के उल्लंघन में अवैध बताया गया है जिन तथ्यों को भी विद्वान अधिवक्ता अप्रार्थी द्वारा अपने तर्कों में बेहिचक स्वीकार किया है । अतः इस बिंदु पर भी अत्यधिक विवेचन की आवश्यकता नहीं रह जाती है ।

10. विद्वान प्रतिनिधि प्रार्थी के तर्क रहे हैं कि प्रार्थी की प्रारंभिक नियुक्ति को अवैध होना अप्रार्थी की ओर से अपने अभिवचनों में नहीं रखा गया है जबकि विद्वान अधिवक्ता अप्रार्थी के तर्क रहे हैं कि अप्रार्थी द्वारा अपने जवाब के मद नं. 26 में ऐसे तथ्य अपनी भाषा में रखे गये हैं । हमारे विनप्र मत में अप्रार्थी द्वारा अपने जवाब के पैरा नं.26 में भर्ती प्रक्रिया के बारे में तथ्य वर्णित किये गये हैं तथा यह भी अपने शब्दों में वर्णित किया गया है कि प्रार्थी की भर्ती में ऐसा कुछ नहीं किया गया है जिससे यह प्रकट होता है कि अप्रार्थी प्रार्थी की नियुक्ति का दूषित होना भी अपने अभिवचनों में रखकर अपने शब्दों में चुनौती देता है ।

11. प्रार्थी की आरे से प्रस्तुत न्यायिक दृष्टांत 2015 (145) एफ एल आर पेज 425 अजयपाल सिंह बनारम हरियाणा वेयर हाउसिंग कॉरपोरेशन के प्रकरण में श्रमिक की नियुक्ति अवैध होने के संबंध में आधार नहीं लिया गया था । प्रार्थी की आरे से प्रस्तुत न्यायिक दृष्टांत 2001 (88) एफ एल आर 741 (एस सी) विक्रमादिया पांडे बनाम इंडस्ट्रियल ट्रिब्यूनल, लखनऊ व अन्य में प्रकरण यू पी कॉर्पोरेटिव सोसायटीज एंपलाईज सर्विस रेग्यूलेशंस 1975 के तहत था । न्यायिक दृष्टांत 2003 (3) आर एल डबल्यू (राज.) 1966 स्टेट ऑफ राजस्थान व अन्य बनाम श्री महेन्द्र जोशी व अन्य के प्रकरण में जूनियर कर्मचारियों को निरंतर किया गया था । न्यायिक दृष्टांत (2010) (2) आर एल डबल्यू (एससी) 1586 अनूप शर्मा बनाम एकजीकयुटिव इंजीनियर, पब्लिक हैल्थ डिवीजन नं. 1, पानीपत के प्रकरण में छंटनी भत्ता भेजा गया या नहीं भेजा गया यह प्रश्नगत था । न्यायिक दृष्टांत (2010) 3 एस सी सी 637 किशनसिंह बनाम एकजीकयुटिव इंजीनियर के प्रकरण में भी न्यायिक दृष्टांत 2015 (145) एफ एल आर पेज 425 अजयपाल सिंह बनाम हरियाणा वेयरहाउसिंग कॉरपोरेशन जैसी ही परिस्थिति थी । न्यायिक दृष्टांत 1979 लैब आई सी 1192 शंकर चकवर्ती बनाम ब्रिटानिया बिस्कूट कपनी लिमिटेड व अन्य इंकवायरी से संबंधित प्रकरण था । न्यायिक दृष्टांत 2005 लैब आई सी स 2279 बैंक ऑफ बडौदा बनाम घेरमभाई रेबारी के प्रकरण में एकमुश्त मुआवजे का कोई प्रश्न अंतर्गत नहीं था । अतः उक्त न्यायिक दृष्टांत तथ्यों की उक्त प्रकार भिन्नता के कारण हस्तगत प्रकरण में प्रार्थी की कोई मदद नहीं करते हैं । अप्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 2007 एल एल आर 561 पंजाब वॉटर सप्लाई एड सवे रेज बोर्ड बनाम रनजोध सिंह व अन्य में माननीय सर्वोच्च न्यायालय द्वारा न्यायिक दृष्टांत सैक्रेट्री ऑफ कर्नाटका व अन्य बनाम उमा देवी व अनय (2006) (4) एस सी सी 1 में पारित अपने अभिमत को अपहेल्ड किया गया है जिसमें अस्थाई श्रमिक को निरंतर नहीं किया जा सकना व ऐसा करने पर यह सार्वजनिक नियोजन का नया तरीका बन जाना जो कि अनुज्ञात नहीं होना अभिनिर्धारित किया गया है । न्यायिक दृष्टांत 2014 एल एल आर 511 सजंय कुमार बनाम लेबर कोर्ट एंड इंडस्ट्रियल ट्रिब्यूनल अजमेर व अन्य में माननीय राजस्थान उच्च न्यायालय द्वारा समान परिस्थिति के श्रमिक को श्रम न्यायालय द्वारा सेवा में पुर्नस्थापना के बजाय रूपये दो लाख के एकमुश्त मुआवजे का अनुतोष उसकी नियुक्ति के अवैध होने के दृष्टिगत दिया जाना सही होना अभिनिर्धारित किया गया है । हस्तगत प्रकरण में प्रार्थी की नियुक्ति विधि अनुसार की गयी हो यह प्रकट नहीं होता है । प्रार्थी स्वयं यह मानता है कि उसे बीच-बीच में बार-बार हटाया भी गया है व फिर कार्य पर लिया गया है । प्रार्थी सेवा से पृथक हो जाने के बाद बेरोजगार रहा हो, इस संबंध में प्रार्थी के न तो कोई अभिवचन है और न ही साक्ष्य है । उक्त समस्त परिस्थितियों एवं अप्रार्थी की आरे से प्रस्तुत उक्त न्यायिक दृष्टांत 2014 एल एल आर 511 सजंय कुमार बनाम लेबर कोर्ट एंड इंडस्ट्रियल ट्रिब्यूनल अजमेर व अन्य में माननीय राजस्थान उच्च न्यायालय द्वारा दिये गये अभिमत के मद्दे नजर प्रार्थी सेवा में पुर्नस्थापना के बजाय एकमुश्त मुआवजा रूपये दो लाख प्राप्ति का अधिकारी है जो अप्रार्थी द्वारा प्रार्थी श्रमिक को इस अवार्ड के प्रकाशन की दिनांक से दो माह के भीतर भुगतान किये जावे । अप्रार्थी द्वारा दो माह में उक्त रकम का भुगतान नहीं करने पर प्रार्थी अप्रार्थी से नौ प्रतिशत वार्षिक साधारण ब्याज भी प्राप्त करने का अधिकारी होगा ।

#### -: आदेश :-

12. एतद्वारा श्रम मत्रालय, भारत सरकार द्वारा निर्देशित उक्त विवाद का उत्तर इस प्रकार से दिया जाता है कि प्रबंधन रीजनल मैनेजर, एच पी सी एल (एल पी जी) प्लाट ग्राम-गाड़ी, नसीराबाद, अजमेर द्वारा प्रार्थी/श्रमिक श्री प्रमोद सिंह चौहान को दि. 20.1.2007 से सेवामुक्त किया जाना अनुचित एवं अवैध है । फलस्वरूप प्रार्थी श्रमिक सेवा में पुर्नस्थापना की बजाय अप्रार्थी से दो लाख रूपये एकमुश्त मुआवजे के रूप में प्राप्ति का अधिकारी है जो अप्रार्थी द्वारा प्रार्थी श्रमिक को इस अवार्ड के प्रकाशन की दिनांक से दो माह के भीतर भुगतान किये जावे । अप्रार्थी द्वारा दो माह में उक्त रकम का भुगतान नहीं करने पर प्रार्थी अप्रार्थी से नौ प्रतिशत वार्षिक साधारण ब्याज भी प्राप्त करने का अधिकारी होगा ।

नई दिल्ली, 10 जनवरी, 2017

**का.आ. 144.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अजमेर के पंचाट (संदर्भ संख्या 04/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.01.2017 को प्राप्त हुआ था।

[सं. एल-30012/9/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th January, 2017

**S.O. 144.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2008) of the Central Government Industrial Tribunal/Labour Court, Ajmer now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Petroleum Corporation Ltd. and other and their workman, which was received by the Central Government on 05.01.2017.

[No. L-30012/9/2008-IR (M)]

RAJESH KUMAR, Under Secy.

अनुबंध

श्रम न्यायालय एवं औद्योगिक न्यायाधिकरण, अजमेर

पीठासीन अधिकारी—श्री एस.एन. टेलर, आर.एच.जे.एस

प्रकरण संख्या— सी.आई.टी.आर. 04 / 08

रेफरेंस संख्या— एल-30012/9/2008-आईआर (एम) दिनांक 11/07/2008

कमल कुमार पुत्र श्री ओमप्रकाश द्वारा  
एससी/एसटी महासंघ धोलाभाटा,  
मुख्य मार्ग, अजमेर

...प्रार्थी

बनाम

क्षेत्रीय प्रबंधक हिन्दुस्तान पेट्रोलियम कारपोरेशन लिमिटेड (एलपीजी प्लान्ट)  
ग्राम गादेरी, दिलवारा, वाया नसीराबाद जिला अजमेर

...अप्रार्थी

उपस्थिति

प्रार्थी की ओर से : श्री आर सी जैन प्रतिनिधि

अप्रार्थी की ओर से : श्री डी एन शर्मा अधिवक्ता

अवार्ड

दिनांक 23.11.16

1. केन्द्र सरकार द्वारा इस श्रम न्यायालय को निम्नलिखित विवाद अधिनिर्णय हेतु निर्देशित किया गया है—

“Whether the action of the management of Regional Manager HCPL (LPG PLANT) village-Gaderi, Nasirabad, Ajmer in terminating the services of Sh. Kamal Kumar S/o Sh. Om Prakash w.e.f. 20-01-2007 is just and legal? If not, to what relief the workman is entitled to and from which date?”

2. अपने स्टेटमेंट ऑफ क्लेम में प्रार्थी/श्रमिक द्वारा अप्रार्थी के साथ अप्रार्थी संख्या 2 के रूप में एम/ओ पेट्रोलियम एंड नैचुनल गैस शास्त्री भवन, नयी दिल्ली को दर्ज करते हुए अभिवचन किए गए हैं कि उसको अप्रार्थी संख्या 2 बिना किसी युक्तियुक्त कारण व सूचना के तथा बिना कोई पूर्व नोटिस दिये तथा उसका पक्ष सुने दिनांक 20.01.2007 को दैनिक वेतन भोगी श्रमिक के पद से सेवा समाप्ति करके मौखिक आदेश देकर सेवा से निष्कासित कर दिया जो विधि विरुद्ध तथा निर्धारित श्रमिक कानून, न्यायिक प्रक्रिया तथा प्राकृतिक न्याय सिद्धान्तों के विपरीत होने से अवैध व गलत है श्रमिक के रूप में कम्प्यूटर टाइपिस्ट का कार्य दैनिक वेतन /मजदूरी रूपये 100/ प्रतिदिन से शुरू होकर 180/ रूपये प्रतिदिन प्राप्त करते हुए दिनांक 20.09.2001 से 20.01.2007 तक कुल सेवा अवधि 4 वर्ष 2 माह 09 दिन उक्त पद पर कार्य करने के बाद दिनांक 30.01.2007 को मौखिक आदेश देकर प्रार्थी/श्रमिक को उक्त दैनिक

वेतन पद से हटा दिया । प्रार्थी श्रमिक को अप्रार्थी के हिंदुस्तान गैस प्लांट ग्राम कादेरी पोस्ट आशापुरा जिला अजमेर में सौ रुपये प्रतिदिन के हिसाब से अप्रार्थी सं.2 ने दि.20.9.2011 को कंप्यूटर टाईपिस्ट कम सहायक लेखा लिपिक पद पर सीधी भर्ती तथा मौखिक आदेश से नियुक्त किया । प्रार्थी श्रमिक कमल कुमार, प्रमोद सिंह चौहान को साथ-साथ नियुक्त किया । साथ ही यह भी आश्वासन नियोजक अप्रार्थी सं 2 ने दिया कि भविष्य में प्रार्थी श्रमिक को नियमित /स्थायी नौकरी पर निर्धारित वेतन श्रंखला में नियुक्त कर लिया जायेगा तथा जब तक दैनिक वेतन समय समय पर बढ़ायी जाती रहेगी । उसी के तहत दैनिक मजदूरी पूर्व में 100 रु फिर 120 /- रुपये तथा 150 / रुपये और अन्त में 180 / रुपये रुपये बढ़ाई गई । 90 दिन पूरे होने पर श्रमिकों को कुछ दिन के लिए हटा दिया जाता रहा और कुछ दिन बाद पुनः दैनिक वेतन श्रमिक पद पर रख लिया जाता था । प्रार्थी / श्रमिक ने दिनांक 13.7.2011 से 19.9.2001 तक 79 दिन, दि.19.10.2001 से 19.12.2001 तक नब्बे दिन, दि.1.2.02 से 2.5.01 तक नब्बे दिन, दि.1.7.02 से 1.10.02 तक नब्बे दिन, दि.1.12.02 से 1.3.03 तक नब्बे दिन, दि.1.5.03 से 1.8.03 तक नब्बे दिन, दि. 1.9.03 से 1.12.03 तक नब्बे दिन, दि.1.1.04 से 31.5.04 तक 150दिन, दि.15.9.04 से 20.1.07 तक 740 दिन कुल 4वर्ष 2 माह 09 दिन नियमित रूप से कार्य किया । उपस्थिति पंजिका प्रार्थी / श्रमिक तथा उसके साथ कार्यरत अन्य दैनिक वेतन भोगी श्रमिक प्रमोद दोनों की मोवमेन्ट दर्शाती थी । उपस्थिति पंजिका के अनुसार ही प्रार्थी श्रमिकों का वेतन बनाया जाता था तथा मस्टरोल पर टिकिट लगाकार हस्ताक्षर करवा कर प्रार्थी / श्रमिक को वेतन/मजदूरी का भुगतान किया जाता था । प्रार्थी श्रमिक तथा उनके साथ साथ काम करने वाले दैनिक वेतन भोगी श्रमिक श्री प्रमोद जिस कम्प्यूटर पर काम करते थे उसमें कोड वर्ड में प्रमोद सिंह का नाम सी सी पी एस सी अर्थात केज्यूएल क्लर्क प्रमोद सिंह चौहान तथा जिस कम्प्यूटर पर प्रार्थी कमल कुमार काम करता था उसकी टाईपशुदा शीट्स निकलती थी उन पर सी सी के के अर्थात केज्यूल क्लर्क कमल कुमार अंकित होता था । क्षेत्रीय प्रबन्धक महोदय, पी एण्ड ए उत्तरी जोन मुम्बई, जो उनसे वरिष्ठ एवं सक्षम अधिकारी है को लिखकर श्री प्रमोद कुमार चौहान, श्री कमल कुमार, श्री सुरेन्द्र सिंह शेखावत तीनों व्यक्तियों हेतु अनुमति तीन क्लर्कों के रिक्त पदों की पूर्ति हेतु मांगी थी । हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि. के महाप्रबन्धक महोदय नॉर्थ जोन, हरियाणा ने दिनांक 11.12.2006 को एक सरकूलर जारी करके कार्पोरेशन मुगल सराय, वाराणासी, भरतपुर बेतालपुर, बहादुरगढ़ होशियारपुर, लोनी अजमेर तथा जालन्धर में कार्यरत उन कर्मचारियों से दिनांक 5.1.2007 तक कम्प्यूटर टाईपिस्ट के रिक्त पदों पर नियुक्ति करने हेतु आमन्त्रित किये जिसमें ग्रेज्यूयट साथ में में दो वर्ष की सेवा तथा अग्रेंजी टाईपिंग जिनकी स्पीड 30 शब्द प्रति मिनट तथा कम्प्यूटर को खोलने व उसके काम का अनुभव भी हो तथा उक्त योग्यता हो । प्रार्थी श्रमिक कमल कुमार ग्रेजुएट होने के साथ साथ दो वर्ष से अधिक समय से उक्त गैस प्लांट पर कार्य भी कर रहा था तथा उसे टाईपिंग के साथ साथ कंप्यूटर टाईपिंग तीस शब्दों से अधिक होने से वह योग्य तथा सक्षम प्रत्याशी था । प्रार्थी श्रमिक ने रजिस्टर्ड डाक से प्रार्थना भी भेजे परन्तु उस पर कोई ध्यान नहीं दिया गया । श्रमिक अपनी योग्यता अनुभव तथा तकनीकी शिक्षा उत्तीर्ण होने के बावजूद उसे अनदेखा किया जाकर इस विवाद को पैदा किया गया । नई नियुक्तियां कर पद भर लिये गये । प्रार्थी श्रमिक एक अनुसूचित जाति का शिक्षित कर्मकार होने से उसे नौकरी में आरक्षण का लाभ प्राप्त है । भारत सरकार ने उन्हे नौकरियों में आरक्षण का लाभ देने के लिये 100 पोईंट रोस्टर लागू किया । उसका लाभ भी श्रमिक को नहीं दिया गया जबकि हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि0 के भारत के विभिन्न कार्यालयों में आज भी आरक्षित पद खाली है आरक्षण कोटा पूरा नहीं होने से वह विधिक रूप से उक्त कारपोरेशन में नौकरी पाने का पात्र है विवाद मियाद में है । न्यायालय को उसे सुनने एवं निर्णित करने का अधिकार प्राप्त है । अप्रार्थी नियोजक द्वारा न तो अपने संस्थान में कोई उपस्थिति रजिस्टर, वरिष्ठता रजिस्टर, रोस्टर रजिस्टर, मजदूरी भुगतान रजिस्टर, कान्ट्रेक्ट लेबर रजिस्टर आदि कुछ भी संधारित नहीं करके श्रमिक कानूनों औद्योगिक विवाद अधिनियम, 1947 वेतन भुगतान अधिनियम 1936 लेबर कोन्टक्ट एक्ट 1970 का खुले रूप से उल्लंघन करते हुए धारा 25(एफ), 25(डी), 25(एम), 25(एन) तथा 25(जी) औद्योगिक विवाद अधिनियम, 1947 के विपरित कार्यवाही की है जो विधि विरुद्ध व गलत है संस्थान हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि एक भारत सरकार का अन्डरटेकिंग संस्थान होने से उस पर उपरोक्त वर्णित कानून तथा केन्द्रिय सरकार के अन्य कानून लागू हैं जिन्हे मानने व पालन करने को वह बाध्य है । अंत में प्रार्थना की गई है कि प्रार्थी श्रमिक को वेतन परिलाभ सहित नियुक्ति का व अन्य अनुतोष जारी किये जावे ।

3. उक्त अप्रार्थी एवं प्रार्थी द्वारा दर्ज अप्रार्थी संख्या 2 एम/ओ पेट्रोलियम एंड नैचुनल गैस शास्त्री भवन, नयी दिल्ली द्वारा जवाब स्टेटमेंट ऑफ क्लेम प्रस्तुत कर प्रार्थी के स्टेटमेंट ऑफ क्लेम को मदवार अस्वीकार करते हुए अभिवचन किये गये है कि प्रार्थी को अप्रार्थीगण द्वारा कभी नियुक्त नहीं किया गया और ना ही उसने अप्रार्थीगण के यहां अपनी सेवाएं ही दी है । ऐसे में उसके द्वारा 240 से अधिक कार्य दिवसों तक कार्य करना नितांत कपोल कल्पित है । प्रार्थी ने फर्जी ओर बनावटी कूटरचित दस्तावेजात अर्थात उपस्थिति पंजिका माननीय न्यायालय के समक्ष प्रस्तुत की है । अप्रार्थीगण द्वारा कोई भी कार्य अवैधानिक तरीके से नहीं किये जाते हैं । अप्रार्थीगण द्वारा कभी भी प्रार्थी के नियुक्ति बावत कोई अनुमति नहीं मांगी गई । अप्रार्थीगण संस्थान एक भारत सरकार का अण्डरटेकिंग उपक्रम है और इस संस्थान में भर्ती किये जाने कर्मचारियों व अधिकारियों के लिये पृथक से एक भर्ती प्रक्रिया बनी हुई है जिसमें निर्धारित प्रारूप में आवेदन पत्र स्वीकार किये जाते हैं और उनकी स्कूलीनी की जाती है और लिखित परीक्षा आयोजित की जाती हैं और उसके पश्चात साक्षात्कार लिये जाते हैं और तदुपरात किसी भी कर्मचारी/अधिकारी की नियुक्ति निर्धारित प्रक्रिया अपनाने के बाद की जाती है । अप्रार्थी संस्थान को उनके मुख्यालय से समय-समय पर निर्देश दिये

जाते हैं कि आप आकस्मिक जरूरतों के लिये मिसलेनियस हेड में कर्मचारी रख सकते हैं और उस कर्मकार का यदि कार्य संतोषप्रद हो तो उस व्यक्ति के बारे में सिफारिश की जाती है कि उसकी नियमित नियुक्ति की जावे । प्रार्थी को अप्रार्थी संख्या 1 द्वारा कभी कोई नियमित नियुक्ति नहीं दी गई । प्रार्थी ने माननीय न्यायालय के समक्ष अन्य कर्मकार के साथ मिलकर एक मिथ्या, कूटरचित दस्तावेजात उपस्थिति पंजिका तैयार की है उक्त उपस्थिति पंजिका पर अप्रार्थीगण के किसी भी अधिकारी एवं प्रभारी अधिकारी के हस्ताक्षर नहीं है और ना ही यह उपस्थिति पंजिका अप्रार्थीगण के कार्यालय की है । उसके विरुद्ध भारतीय दण्ड संहिता की धारा 193 सप्तित धारा 340 दण्ड प्रक्रिया संहिता के तहत पृथक से कार्यवाही खोली जावे । अंत में प्रार्थना की है कि प्रार्थी का स्टेटमेंट ३०५ क्लेम मय विशेष हर्जे खर्चे के खारिज फरमाया जावे और प्रार्थी के विरुद्ध जाली दस्तावेजात उपस्थिति पंजिका के बारे में न्यायालय में स्वंयं जांच कर संबंधित फौजदारी न्यायालय में इस्तगासा प्रस्तुत किये जाने के आदेश प्रदान किए जावे ।

4. प्रार्थी द्वारा अपनी साक्ष्य में ए डब.1 अशोक, ए डब.2 अब्दुल, ए डब.3 स्वयं प्रार्थी क्लेम को परीक्षित करवाया है जबकि अप्रार्थी की ओर से अप्रार्थी साक्षी एन ए डब.1 के के रॉय को परीक्षित करवाया गया है । प्रार्थी की ओर से दस्तावेजी साक्ष्य में प्रदर्श ए 1 लगायत ए 14 दस्तावेज प्रदर्शित करवाये गये हैं । अप्रार्थी की ओर से दस्तावेजी साक्ष्य में प्रदर्श एम—1 लगायत एम—3 दस्तावेज की फोटो प्रतियां प्रस्तुत कर प्रदर्शित करवायी गयी हैं ।

5. बहस अंतिम सुनी गयी । विद्वान प्रतिनिधि प्रार्थी के स्टेटमेंट ३०५ क्लेम के तथ्यों के दोहराव के साथ तर्क रहे हैं कि प्रार्थी अप्रार्थी का श्रमिक होना प्रार्थी की मौखिक व दस्तावेजी साक्ष्य से सिद्ध है । प्रार्थी को बिना कोई मुआवजा दिये व नोटिस दिये, हटाया जाना औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ के विरुद्ध है । प्रार्थी ने लंबे समय तक अप्रार्थी के यहां सेवायें दी है वह नियमित किये जाने योग्य था चूंकि प्रार्थी का सेवा से पृथक किया जाना अवैध है अतएव प्रार्थी पूर्व वेतन व भत्तों सहित सेवा में पुर्नस्थापना का पात्र है । अप्रार्थी द्वारा अपने अभिवचनों में प्रार्थी का श्रमिक होने से इंकार किया गया है तथा उनकी ओर से प्रार्थी की नियुक्ति अवैध होने के संबंध में कोई अभिवचन नहीं किये गये हैं तथा प्रकरण में हमेशा बदनीयती पूर्वक आचरण किया गया है । अतएव प्रार्थी को एकमुश्त मुआवजे के बजाय सेवा में पुर्नस्थापित किया जाना विधिपूर्ण व न्यायोचित है । उनके द्वारा अपने तर्कों के समर्थन में निम्नलिखित न्यायिक दृष्टांत भी पेश किये गये हैं:-

- 1—2015 (145) एफ एल आर पेज 425 अजयपाल सिंह बनारम हरियाणा वेयरहाउसिंग कॉरपोरेशन,
- 2—2001 (88)एफ एल आर 741 (एस सी)विकमादिया पांडे बनाम इंडस्ट्रियल ट्रिब्यूनल, लखनऊ व अन्य,
- 3—2003 (3)आर एल डबल्यू (राज0)1966 स्टेट ३०५ क्लेम राजस्थान व अन्य बनाम श्री महेंद्र जोशी व अन्य,
- 4—2010 (2) आर एल डबल्यू (एससी)1586 अनूप शर्मा बनाम एकजीक्युटिव इंजीनियर, पब्लिक हैल्थ डिवीजन नं.1, पानीपत,
- 5—(2010) ३ एस सी सी 637 कृष्णसिंह बनाम एकजीक्युटिव इंजीनियर, हरियाणा स्टेट एग्रीकल्चर मार्केटिंग बोर्ड रोहतक,
- 6—ए आई आर 1979 लैब आई सी 1192 (एस सी) शंकर बनाम ब्रिटानिया बिस्कूट कंपनी,
- 7—2005 लैब आई सी स 2279 बैंक ३०५ क्लेम बड़ौदा बनाम घेरमभाई हरजीभाई रेबारी । अंत में उनके द्वारा प्रार्थी के स्टेटमेंट ३०५ क्लेम में वर्णित अनुतोष जारी किये जाते हुए उक्त विवाद का उत्तर प्रार्थी के पक्ष में दिये जाने की प्रार्थना की गयी है ।

6. विद्वान अधिवक्ता अप्रार्थी द्वारा अपने मौखिक तर्कों में प्रार्थी का अप्रार्थी का श्रमिक होना एवं उसको बिना रिट्रैचमेंट मुआवजा एवं नोटिस दिये सेवा से पृथक किया जाना स्वीकार किये जाते हुए तर्क दिये गये हैं कि प्रार्थी की नियुक्ति चूंकि अप्रार्थी के नियम व पॉलिसी के विरुद्ध है अतएव प्रार्थी को हद से हद एकमुश्त मुआवजे का अनुतोष दिया जा सकता है । न्यायिक दृष्टांत 2014 एल एल आर 511 संजय कुमार बनाम लेबर कोर्ट एंड इंडस्ट्रियल ट्रिब्यूनल अजमेर व अन्य के अनुसार ही प्रकरण की स्थिति होने के भी तर्क दिये गये हैं । उनके द्वारा अपने तर्कों के समर्थन में उक्त न्यायिक दृष्टांत के अलावा निम्नलिखित न्यायिक दृष्टांत भी पेश किये गये हैं:-

- 1—2007 एल एल आर 561 पंजाब वॉटर सप्लाई एंड सेवरेज बोर्ड बनाम रनजोध सिंह व अन्य,
- 2—2012 एल एल आर 718 मैं डी एस आई आई डी सी बनाम प्रवीण कुमार शर्मा ।

7. उभयपक्षकारान् के तर्कों के मद्दे नजर उनके द्वारा प्रस्तुत न्यायिक दृष्टांतों के अभिमत एवं संबंधित विधि को विचार में लेते हुए पत्रावली का आद्योपांत गंभीरतापूर्वक परिशीलन किया गया ।

8. प्रार्थी की ओर से आयी मौखिक साक्ष्य व दस्तावेजी साक्ष्य से तथा प्रार्थी की ओर से आयी मौखिक साक्ष्य में रिथर होने से एवं अप्रार्थी की ओर से आयी साक्ष्य से प्रार्थी की मौखिक एवं दस्तावेजी साक्ष्य का खंडन नहीं होने से प्रार्थी द्वारा अपने स्टेटमेंट ३०५ क्लेम में वर्णित समयावधि में अप्रार्थी के यहां श्रमिक के रूप में कंप्यूटर टाईपिस्ट का

दैनिक वेतन पर कार्य करना बखूबी साबित होता है तथा इस तथ्य को विद्वान अधिवक्ता अप्रार्थी द्वारा बेहिचक अपने तर्कों में स्वीकार भी किया है । अतः इस बिंदु पर अत्यधिक विवेचन की आवश्यकता नहीं रह जाती है ।

9. प्रार्थी को अप्रार्थी द्वारा सेवा से पृथक किये जाते समय कोई छंटनी भत्ता दिया जाना या नोटिस दिया जाना अप्रार्थी की ओर से अपने अभिवचनों एवं साक्ष्य में नहीं रखा गया है तथा प्रार्थी की ओर से इन आधारों पर प्रार्थी को सेवा से पृथक किया जाना औद्योगिक विवाद अधिनियम 1947 की धारा 25 एफ के उल्लंघन में अवैध बताया गया है जिन तथ्यों को भी विद्वान अधिवक्ता अप्रार्थी द्वारा अपने तर्कों में बेहिचक स्वीकार किया है । अतः इस बिंदु पर भी अत्यधिक विवेचन की आवश्यकता नहीं रह जाती है ।

10. विद्वान प्रतिनिधि प्रार्थी के तर्क रहे हैं कि प्रार्थी की प्रारंभिक नियुक्ति को अवैध होना अप्रार्थी की ओर से अपने अभिवचनों में नहीं रखा गया है जबकि विद्वान अधिवक्ता अप्रार्थी के तर्क रहे हैं कि अप्रार्थी द्वारा अपने जवाब के मद नं.26 में ऐसे तथ्य अपनी भाषा में रखे गये हैं । हमारे विनम्र मत में अप्रार्थी द्वारा अपने जवाब के पैरा नं. 26 में भर्ती प्रक्रिया के बारे में तथ्य वर्णित किये गये हैं तथा यह भी अपने शब्दों में वर्णित किया गया है कि प्रार्थी की भर्ती में ऐसा कुछ नहीं किया गया है जिससे यह प्रकट होता है कि अप्रार्थी प्रार्थी की नियुक्ति का दूषित होना भी अपने अभिवचनों में रखकर अपने शब्दों में चुनौती देता है ।

11. प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 2015 (145) एफ एल आर पैज 425 अजयपाल सिंह बनारम हरियाणा वेयरहाउसिंग कॉरपोरेशन के प्रकरण में श्रमिक की नियुक्ति अवैध होने के संबंध में आधार नहीं लिया गया था । प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 2001 (88) एफ एल आर 741 (एस सी) विक्रमादिया पांडे बनाम इंडस्ट्रियल ट्रिब्यूनल, लखनऊ व अन्य में प्रकरण यू पी कॉर्पोरेटिव सोसायटीज एंपलाईज सर्विस रेग्यूलेशंस 1975 के तहत था । न्यायिक दृष्टांत 2003 (3)आर एल डबल्यू (राज)01966 स्टेट ऑफ राजस्थान व अन्य बनाम श्री महेंद्र जोशी व अन्य के प्रकरण में जूनियर कर्मचारियों को निरंतर किया गया था । न्यायिक दृष्टांत 2010 (2) आर एल डबल्यू (एससी)1586 अनुप शर्मा बनाम एकजीक्युटिव इंजीनियर, पब्लिक हैल्थ डिवीजन नं.1, पानीपत के प्रकरण में छंटनी भत्ता भेजा गया या नहीं भेजा गया यह प्रश्नगत था । न्यायिक दृष्टांत 2010 3 एस सी सी 637 किशनसिंह बनाम एकजीक्युटिव इंजीनियर के प्रकरण में भी न्यायिक दृष्टांत 2015 (145) एफ एल आर पैज 425 अजयपाल सिंह बनारम हरियाणा वेयरहाउसिंग कॉरपोरेशन जैसी ही परिस्थिति थी । न्यायिक दृष्टांत 1979 लैब आई सी 1192 शंकर चकवर्ती बनाम ब्रिटानिया बिस्कूट कंपनी लिमिटेड व अन्य इंक्वायरी से संबंधित प्रकरण था । न्यायिक दृष्टांत 2005 लैब आई सी सं. 2279 बैंक ऑफ बडौदा बनाम घेरमभाई हरजीभाई रेबारी के प्रकरण में एकमुश्त मुआवजे का कोई प्रश्न अंतर्गत नहीं था । अतः उक्त न्यायिक दृष्टांत तथ्यों की उक्त प्रकार भिन्नता के कारण हस्तगत प्रकरण में प्रार्थी की कोई मदद नहीं करते हैं । अप्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 2007 एल एल आर 561 पंजाब वॉटर सप्लाई एंड सेवरेज बोर्ड बनाम रनजोध सिंह व अन्य में माननीय सर्वोच्च न्यायालय द्वारा न्यायिक दृष्टांत सैक्रेट्री ऑफ कर्नाटका व अन्य बनाम उमा देवी व अनय (2006) (4) एस सी सी 1 में पारित अपने अभिमत को अपहेल्ड किया गया है जिसमें अस्थाई श्रमिक को निरंतर नहीं किया जा सकना व ऐसा करने पर यह सार्वजनिक नियोजन का नया तरीका बन जाना जो कि अनुज्ञात नहीं होना ऐसा अभिनिर्धारित किया गया है । न्यायिक दृष्टांत 2014 एल एल आर 511 संजय कुमार बनाम लेबर कोर्ट एंड इंडस्ट्रियल ट्रिब्यूनल अजमेर व अन्य में माननीय राजस्थान उच्च न्यायालय द्वारा समान परिस्थिति के श्रमिक को श्रम न्यायालय द्वारा सेवा में पुनर्स्थापना के बजाय रूपये दो लाख के एकमुश्त मुआवजे का अनुतोष उसकी नियुक्ति के अवैध होने के दृष्टिगत दिया जाना सही होना अभिनिर्धारित किया गया है । हस्तगत प्रकरण में प्रार्थी की नियुक्ति विधि अनुसार की गयी हो यह प्रकट नहीं होता है । प्रार्थी स्वयं यह मानता है कि उसे बीच-बीच में बार-बार हटाया भी गया है व फिर कार्य पर लिया गया है । प्रार्थी सेवा से पृथक हो जाने के बाद बेरोजगार रहा हो, इस संबंध में प्रार्थी के न तो कोई अभिवचन है और न ही साक्ष्य है । उक्त समस्त परिस्थितियों एवं अप्रार्थी की ओर से प्रस्तुत उक्त न्यायिक दृष्टांत 2014 एल एल आर 511 संजय कुमार बनाम लेबर कोर्ट एंड इंडस्ट्रियल ट्रिब्यूनल अजमेर व अन्य में माननीय राजस्थान उच्च न्यायालय द्वारा दिये गये अभिमत के मद्देन नजर प्रार्थी सेवा में पुनर्स्थापना के बजाय एकमुश्त मुआवजा रूपये दो लाख प्राप्ति का अधिकारी होना अभिनिर्धारित किया जाना न्यायसंगत है एवं उक्त विवाद का उत्तर इसी अनुसार दिया जाना न्यायोचित है ।

#### —: आदेश :—

12. एतद्वारा श्रम मंत्रालय, भारत सरकार द्वारा निर्देशित उक्त विवाद का उत्तर इस प्रकार से दिया जाता है कि प्रबंधन रीजनल मैनेजर, एच पी सी एल (एल पी जी) प्लांट ग्राम-गादेरी, नसीराबाद, अजमेर द्वारा प्रार्थी/श्रमिक श्री कमल कुमार पुत्र श्री ओमप्रकाश को दि. 20.1.2007 से सेवामुक्त किया जाना अनुचित एवं अवैध है । फलस्वरूप प्रार्थी श्रमिक सेवा में पुनर्स्थापना की बजाय अप्रार्थी से दो लाख रूपये एकमुश्त मुआवजे के रूप में प्राप्ति का अधिकारी है जो अप्रार्थी द्वारा प्रार्थी श्रमिक को इस अवार्ड के प्रकाशन की दिनांक से दो माह के भीतर भुगतान किये जावे । अप्रार्थी द्वारा दो माह में उक्त रकम का भुगतान नहीं करने पर प्रार्थी अप्रार्थी से नौ प्रतिशत वार्षिक साधारण ब्याज भी प्राप्त करने का अधिकारी होगा ।

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 145.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ सं. 31/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-12011/25/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 145.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 11.01.2017.

[No. L-12011/25/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, “SHRAM SADAN”, G G PALYA, TUMKUR ROAD, YESWANTHPUR, BANGALORE

DATED : 21<sup>st</sup> DECEMBER, 2016

PRESENT : Shri V S RAVI, Presiding Officer (Hubli Camp)

**CR No. 31/2006**

#### I Party

Sh. M. H. Shankarappa,  
S/o. Hanumaiah, Opp. Gopalayya , Building.  
I Cross, Hosmane, Shimoga – 577201  
Repdt. by : The General Secretary,  
Dharwad District Bank Employees’ Association,  
No.9, Corporation Building, Broadway,  
Hubli – 580020

For I Party : M. Rama Rao,  
the authorized representative of workman  
Mr. M. H. Shankarappa

#### II Party

The Zonal Manager,  
Bank of India,  
Zonal Office, M G Road,  
Bangalore - 560009

For II Party: V.A. Byatnal, Advocate

#### AWARD

1. The Central Government vide Order No.L-12011/25/2006-IR(B-II) dated 02.02.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made the reference and also, the corrigendum, for adjudication with following Schedule :

#### SCHEDEULE

“Whether the management of Bank of India is justified in not regularizing and terminating the services of Shri M.H. Shankarappa? If not, to what relief the workman is entitled to?”

2. Brief details mentioned by the I party, in the Claim Statement, are as follows:

The workman, Sh. M.H. Shankarappa has been appointed as a Sub Staff on 20.04.1992 at Bank of India, Shimoga in the vacant post of Sub staff, after the due process of employment through the employment exchange. Since, from the date of appointment, he has worked for nearly ten years. During the period of his service the II Party has extracted, all kinds of sub staff work, from the I Party-workman. The II Party has suddenly denied the work to the I Party-workman from 08.03.2001, without quoting any reason. The I Party-workman has suffered a lot, due to the

unilateral action of the II Party. Considering the requests of the I Party-workman, the II Party has reinstated into the service, the I Party-workman again from 20.08.2002. In spite of sincere work of the I Party-workman, the II Party again terminated the service of the I Party-workman from 01.08.2003, without any notice or reason. On 30.08.2004, the II Party has entered into a settlement with the I Party before the Assistant Labour Commissioner (Central) Hubli. The II Party has signed the above settlement with an understanding that, the I Party-workman will be given temporary work at the Shimoga branch upto 280 days in a year and the I Party-workman will be filled in the vacancy of sub staff that exists in the state of Karnataka. Also, the II Party has paid to the I Party-workman, a Bonus of Rs.10,400/- on 02.12.2004 for the service rendered from 1992 to 2004, after filing compliant with the Labour Enforcement Officer (Central). The II Party has adopted the unfair labour practice by employing the I Party-workman continuously for more than 10 years as temporary workman, so as to deny him, the benefits of permanent workman. Hence, the I Party-workman has requested to direct the II Party, to reinstate the service of I Party-workman, with full back wages, and ancillary benefits with, costs.

3. Brief details mentioned in the counter statement are as follows:-

The I Party-workman, has been provided the work on purely casual basis, by Shimoga Branch of Bank of India. The I Party-workman, has been paid, appropriately, for the said kind of temporary assignments, depending upon the number of hours, he has been engaged, on each day. Further, the I Party-workman, has been engaged on purely temporary basis only, on different occasion and hence, it will not confer any right for regularization of his services in the Bank, on permanent basis. The bank is barred from regularizing employment in respect of Casual Labour as per the Judgement of the Hon'ble Supreme Court of India (Division Bench) in the case of National Fertilizers Limited and Others Vs Somvir Singh reported in AIR 2006 SC 2319. The service of I Party-workman, has not been terminated on 08.03.2001 as alleged by the I Party-workman, without quoting any reason, or reinstated on 20.08.2002. Since, the I Party workman, has been provided with work on purely temporary basis for certain periods, such engagements will come to an end, each time when the temporary work is completed. Further, there is no understanding as alleged by the I Party-workman, to provide the engagement to him in the bank for 240 days in a year, and the I Party workman, has been paid appropriate wages/bonus for the period during which he has been engaged to perform the work on purely casual nature from time to time. The I Party-workman, also intended, to take undue advantage by creating undue pressure on the Bank by making the settlement dated 30.08.2004 as a tool to get regular employment in the Bank. Also, the demand of the I Party-workman, for reinstatement of his services with regularization of service from 01.08.2003 and also, for payment of wages in the pay scale of sub staff of the Bank from 1992 to 01.08.2003 cannot be considered. Therefore, the II Party Prays this Tribunal to dismiss the claim of the I Party-workman, as not maintainable either on the grounds of facts or on the grounds of law and also in terms of the judgement of the Hon'ble Division Bench of the Supreme Court, as mentioned above.

4. The pertinent points, that arise for consideration, in the present matter, are:-

- (i) Whether, the II Party-Bank of India is justified, in not regularizing and terminating the services of Shri M.H. Shankarappa/Workman?
- (ii) To what relief, the workman is entitled to?

5. Analysis, discussions and findings with regard to the above mentioned points:-

Sh. M.H. Shankarappa, workman, has examined himself as WW 1 and also filed Exhibits Ex W-1 to Ex W-26, as specifically pointed out in the end portion of the present award. The I Party-workman, has specifically stated that initially the workman has been appointed as temporary sub staff on 20.04.1992, itself at Shimoga district, as per the II Party-Bank rules and regulations, and the I Party workman, has been appointed in the vacant place of Sh. M. Anjanappa a sub staff, who has been subsequently removed from the service. Also, MW 1, who has been examined on behalf of II Party namely, Mr. Mohan Kumar, Branch Manager Shimoga, has clearly admitted in his evidence that he is conversant with the facts of the present case, and he has also clearly admitted that it is true to suggest the said Sh. M. Anjanappa, sub staff at Shimoga Branch, has been suspended in April 1992 and it is true to suggest that since April 1992, the I Party has worked in the place of Sh. M. Anjanappa, on the temporary basis. The I Party-workman, has categorically stated in the claim statement, as well as in the evidence that even though, there existed vacancies, the II Party Bank has not regularized the service of the I Party-workman, and initially, I Party-workman, has been appointed as temporary staff only, and also served for several days as pointed in the claim statement.

6. Further, MW 1 has also admitted that it is not known as to whether the branch manager of the Shimoga has refused to give work for I Party-workman, and he does not know, whether the I Party- workman, has been again taken, to work as sub staff in Shimoga branch on 20.08.2002 and discontinued from 01.08.2003. However, the I Party-workman, has produced Ex W-2 dated 24.12.1997 itself, and in the said Ex W-2, the II Party-Bank manager has admitted that the casual labour is being employed, on regular basis, ever since, the said Mr. Anjanappa has been suspended from service and later, the said Anjanappa has been dismissed. Further, in the Ex W-3, dated 31.03.1998,

the Shimoga branch manager of II Party, has specifically stated that the work of the workman are very good and also he is working hard and hence, recommended for the appointment of the said workman, in bank service against any vacancy in Chikmangalur or any other branches, which is likely to be opened, shortly.

7. Further, in the claim statement as well as in evidence, the I Party-workman, has categorically stated that even after the denial of granting work to I Party on 01.08.2003, there existed several vacancies in the II Party-Bank and the workman has been sponsored by the Employment Exchange and initially appointed as temporary sub staff on Shimoga branch on 20.04.1992. Thereafter also, for several days the I Party-workman, has worked with II Party-Bank, as per the details mentioned by the I Party-workman, in the claim statement as follows:-

Year	No. of days engaged
1992-1993	280
1993-1994	280
1994-1995	281
1995-1996	291
1996-1997	272
1997-1998	283
1998-1999	282
1999-2000	269
2000-2001	272
2002-2003	191

Further, the workman has also pointed out in the claim statement, the II Party-Bank has paid bonus of Rs.10,4000/- on 02.12.2004, for the services rendered by the workman. In the statement of objection also, the II Party-Bank has clearly admitted that the said workman, has been paid appropriate wages/bonus.

8. Further, in the claim statement itself, the I Party-workman, has specifically mentioned the details of the vacancies existed at Shimoga branch alone from 1992 to 2005 as under:-

Year	Employed	Vacant	Total
1992	6	0	6
1993	5	1	6
1994	5	1	6
1995	5	1	6
1996	5	1	6
1997	5	1	6
1998	4	2	6
1999	4	2	6
2000	5	1	6
2001	5	1	6
2002	4	2	6
2003	3	3	6
2004	3	3	6
2005	3	3	6

Based on the above mentioned details only, the I Party-workman, has pointed out that there are clear cut vacancies from 01.08.2003 in sub staff cadre, and the II Party-bank, for the best known reason, known to itself alone, has not provided employment to the said workman, without any reasonable grounds. Further, MW-1 Manager of Shimoga branch has also admitted that it is true to suggest that full time sweeper Smt. Kanamma, retired in September 1998, and it is true to suggest that Balappa working in Shimoga branch expired in 2002, and it is true that another sub staff, Ramachandra retired in 2009 and to the post of Kanamma, one Chandrashekhar has been posted and for the said Ramachandra and Anjanappa, no postings, have been made. Hence, it is seen that there is significant force in the said submission made by the I Party-workman.

9. Further, in Ex W-5 dated 26.07.2000 also, the Branch Manager of the II Party-Bank, has clearly stated that the, said workman Sh. M.H. Shankarappa, has worked in the place of Anjanappa, and the said workman is a hard working and sincere staff and since, he has already worked with the II Party-Bank, the said Branch Manager has recommended for the appointment of the said Sh. M.H. Shankarappa, in II Party-Bank's service. Further, in the Ex W-6 dated 02.08.2000, also the branch manager of the II Party Bank, has clearly admitted that I Party-workman, namely Sh. M.H. Shankarappa has been working in the place of regular sepoy since 1992 and he has started working with II Party-bank, in 1992 from the age of 26 years, and hence the I Party-workman, also satisfied the eligibility criteria, and it is also pointed out that, I Party-workman, is a hard working and sincere staff and also, well versed in bank's work, and also the employment registration number mentioned as 227/89, in the letter enclosed with Ex W-6. Further, as per details mentioned in Ex W-7 dated 15.02.2004, itself the I Party has requested the II Party-Bank, for reinstatement and regularization of service as sub staff in the bank and also I Party-workman, has stated that, he has been denied work from 01.08.2003, without any reason and also, he has repeatedly requested the II Party-Bank to restore him as sub staff in the interest of justice. Further, in the settlement entered into before the Conciliation Officer and Assistant Labour Commissioner, the II Party-Bank, has agreed that the I Party will be engaged by the bank as the casual worker, on temporary basis and as and when the vacancies arises in part time and full time sub staff cadre, the workman will be considered for taking into service. In the Ex W-12, letter dated 26.10.2004, the I Party has written to II Party-bank, that the II Party has not engaged him into the service, though there existed the clear vacancies, for the post of sub staff. Again by letter dated 16.12.2004, as per Ex W-14 the I Party-workman, has requested for providing regular work in sub staff cadre, and again as per the letter dated 05.01.2005, marked as Ex W-15 the Dharwad District Bank Employees Association has also sent a letter to the II Party to extend speedy justice to I Party-workman, by providing him regular employment, and once again, as per the letter dated 03.02.2005, in Ex W-16, the I Party-workman, has sent the letter to Bank and also, as per Ex W-17 the workman has sent a representation to Director of Public Grievances Department, requesting for the regular sub staff post and also in Ex W-18 he has requested for the same, by writing letter to II Party-Bank. Also, as per Ex W-19 letter dated 24.11.2005, the I Party-workman, has sent representation to Assistant Labour Commissioner (Central) to refer the dispute for adjudication by the court, as the II Party has not fulfilled its commitment and also, not implemented the settlement in its true spirit.

10. Further, in Ex W-20, the Zonal Manager of the II Party has stated, the I Party Sh. M.S. Shankarappa has intended to take undue advantage by creating undue pressure on the bank by making the settlement dated 30.08.2004 as a tool to get regular employment in the bank. However, it is seen that II Party is a Premier Nationalised Bank, with various officers, and Executives with high qualification and Designations, and hence, the poor workman, namely M.S. Shankarappa, a temporary sub staff cannot create undue pressure on the II Party-Bank. Hence, the said submission of II Party is not sustainable. Further, it is found that in Ex W-11, the bank itself has entered into settlement, and the Memorandum of Settlement has been signed before Conciliation Officer and Assistant Labour Commissioner (Central), and also signed by Representative of the II Party-Bank, by the Senior Manager, IRD, Bank of India. Further, on behalf of the II Party-Bank, it is pointed out that, as and when vacancies arises in the part time/full time sub staff cadre, the I Party-workman, would be considered, subject to Bank's recruitment rules and regulations and at the same time, the II Party-Bank, has admitted that the workman will be provided engagement with the Bank as the casual worker. Further, in the letter dated 02.08.2000, in Ex W-6 the Branch Manager of II Party has admitted that the I Party-workman, aged only 26 years, on the date of joining into service and hence, he has satisfied the eligibility criteria, to be appointed as sub staff. However, the bank has filed the representation before the Assistant Labour Commissioner (Central) on 13.12.2005 as per EX W-20, that the I Party-workman, as no right to get the posting orders from the bank. In such circumstances it is clear that the II Party is taking the aprobate and reprobate stand, in various stages and on various dates, only. Accordingly, the I Party-workman, has requested the Assistant Labour Commissioner to refer the dispute to the court. Hence, the reference has been made to this court.

11. Further, in the reply as per Ex W-25, received under Right to Information, namely, from the Central Public Information officer, of the II Party, it is clearly admitted about the full time sub staff in II Party-Bank in Karnataka State, and the details have been mentioned as follows:-

"Retired:19, Dismissed:8, Deceased:14, VRS:5."

Though, the II Party Management has filed the Ex M-1 Seventh Bi-partite Settlement dated 27.03.2000, and Ex M-2 Memorandum of Settlements dated 10.04.2002, it is clear from the records and evidence of both sides, that the said workman has worked as temporary sub staff and in spite of the fact that there existed the vacancies of the sub staff posts, with the II Party-Bank, and also the I Party is entitled to get the post, the I Party-workman, has not been taken into the service by the II Party-Bank, without any valid reasons. From the above mentioned circumstances, it is seen that the II Party bank has refused to provide employment to the workman, without any valid reasons and I Party-workman, has proved that he has got the valid grounds to get postings as a new recruit in the sub staff post, and also II Party has to be directed to appoint the I Party as sub staff without raising any super technical or hyper technical objections for, the above mentioned peculiar reasons.

12. Further, it is found that the II Party is not justified in refusing to provide employment to the I Party-workman, as sub staff, as a new appointee and also, the action of II Party in not providing employment as sub staff is not justified. Further, it is seen that the II Party Management has discriminated the I Party-workman, with mala fide intention by not providing employment as sub staff, for the above mentioned reasons. Further, it is pertinent point out, that in spite of repeated requests made to various authorities on various days, the II Party Management has not considered to appoint I Party-workman, as sub staff. It is not the case of the II Party-Bank that the I Party-workman, has never worked with II Party-Bank, and on the other hand, the II Party, in the Counter Statement and also MW1, have admitted that the I Party-workman, has already served with II Party-Bank, on various days as pointed out in the claim statement, on temporary basis and also, it is seen that, even though, there existed vacancies in the sub staff cadre, the application of the I Party has not been considered by the II Party-Bank without any valid reasons, though the Branch Manager of II Party-Bank has admitted, as already pointed out, that on the date of initial appointment the I Party has satisfied the age criteria also. For the above mentioned reasons and grounds, it is found that there is violation of the provision of the ID Act and I Party-workman, is entitled to get employment as sub staff as a new candidate, on regular roles of the II Party Bank. Further, for the above mentioned details, the I Party-workman, is entitled to get the posting as fresh sub staff in regular post only and except that, I Party-workman, is not entitled to get any other relief as claimed in the Claim Statement.

13. Further, in the citations filed on behalf of I Party-workman, reported in ILR KAR 2000 4356, (in the case of Chief General Manager, RBI Vs Presiding Officer and Another) it is clearly held as follows:-

“Employing workmen as casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen, is an ‘Unfair Labour Practice’.” And also, in the judgement reported in ILR 2001 KAR 3407, (in the case of State of Karnataka and Others Vs H.Ganesh Rao and Others) it is clearly observed as follows:-

“Direction to regularize can be given in cases where the initial appointment on daily wage basis was against the existing vacancies and was neither illegal nor in “Utter disregard” of the procedure and rules.” In the present case also, it is found that the I Party, is entitled to get above mentioned relief of employment as sub staff, only, on the fresh, regular appointment basis and II Party has to be directed, to take the I Party-workman, as sub staff, without raising any technical objection, and also, it shall be treated as a fresh regular posting, for the above mentioned facts and situations.

14. Further, the Learned Counsel appearing for the II Party has relied upon the judgement reported in AIR 2006 SC 2319 (in the case of National Fertilizers Ltd. & Ors Vs Somvir Singh), wherein it is observed by the Hon’ble Supreme Court as follows only:-

“Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the Respondents/Workman are illegal. They do not, thus, have any legal right to continue in service.”

However, in the present case, the facts and details are entirely different and in fact, the workman has been appointed in the place of regular sepoy, since 1992, and also, satisfied the eligibility criteria and also a hard working and sincere employee and he is also well versed with the Bank’s work, as per the details, already mentioned in Ex W-6, by the Branch Manager of II Party-Bank. For the above mentioned peculiar facts of the present case, it is seen that the above mentioned judgment relied, on behalf of the II Party, is not applicable to the present case. Further, a recommendation has been made by the Branch Manager of the II Party-Bank himself, to the effect that, he is a sincere and hardworking staff, and he is fully qualified to be appointed as sub staff, as he has satisfied the age criteria also. Further, in the said citation filed on behalf of the II Party-Bank, it is ultimately held as follows only:-

“We may, however, observe that their cases may be considered for future appointment and age bar, if any, in view of the policy decision of the Appellant itself may be relaxed to the extend they had worked. The salary or any remuneration paid to them, however, may not be recovered.” In this present case also, it is found that as a fresh regular appointment basis only, the workman has to be appointed, considering the above mentioned details.

15. Further, this Court has to discharge its statutory function in terms of the provisions of Industrial Dispute Act, based upon the facts and circumstances of the present case only. Further, it is seen that the refusal of work and also,

not providing the work to workman, by the II Party-Bank, in an arbitrary and illegal manner, in complete contravention of the principles of natural justice and the provisions of law, is not justified. Further, the workman has also served in the II Party-Bank for several years, as per the letter issued by the Manager of the II Party-Bank, however he is not given a regular posting as a sub staff, though he has rendered the long, loyal, dedicated service and also maintaining the commitment to work. Furthermore, Economic exploitation of workman in the guise of contract labour, goes against the Directive Principles stated in the Constitution of India and the Contract Labour Act. Also, the system of contract workers employed by II Party-Bank, even though there existed regular vacancies, amounts to unfair labour practice under the V schedule of the Industrial Disputes Act 1947. Further, the I Party workman sent to II Party-Bank, several letters, seeking that he be taken back into service and allowed to be continued to work. It is seen that, II Party-Bank has arbitrarily refused employment with effect from 01.08.2003, without any valid reason, even though, there existed regular vacancies. During his employment, the said workman has not given any room for any complaint, on his work performance or conduct, and has not committed any act of misconduct. On the other hand, the Manager of II Party-Bank, himself, admitted in the letter that the said workman is a hard working and sincere staff, and also well versed in Bank's work and he has also satisfied the eligibility criteria. Thereafter the I Party-Workman has made several requests to the II Party-Management to permit him to continue his service, but, to no avail. Despite his repeated attempts requesting for his employment, the II Party-Management has refused to do so and has made such termination, in an arbitrary and unlawful fashion, without even providing him an opportunity of being heard. The actions of the II Party-Management is male fide, discriminatory and amounts to unfair labour practice as defined under sec. 2(ra) read with the V schedule of the Industrial Disputes Act. The I Party workman has been employed under nomenclature "Casual employee" for the long time, in the above mentioned several years, with the sole intension of depriving him of the status and privilege of a permanent workman.

16. Further, the I Party-Workman continued to work on low wages and exploitative working conditions, only with the reasonable expectation that he will be provided with the permanent post of the sub-staff. Also, the action of the II Party-Bank is totally illegal, unjustified and opposed to all the labour laws and is also opposed to public policy and public employment, under the Constitution and the various judgements of the Hon'ble Supreme Court. Further, the action of the II Party in refusing employment to the I Party workman is totally illegal, unjustified and amounts to unfair labour practice as defined under sec. 2(ra) of the ID Act read with the V schedule. Also, the I Party has been discriminated and victimized for no fault of his, and the II Party management has utilized the services of the said workman, and also, appreciated the services rendered by the I Party-Workman, as is evidenced by the letters of appreciation given to the I Party-Workman by the II Party-Branch Manager, himself. Further, the I Party-workman is ready to join work if provided, and also, looking at it, from any point of view, the extreme step of abruptly depriving the I Party-workman of his livelihood, is nothing but economic death to the workman and his family and the same is totally unfair and unjustified. For the above mentioned circumstances, the Workman would qualify for a relief, though it would have to be suitably, moulded, having regard to the materials on record and the only direction that the workman would be entitled to get the post of sub staff and the II Party-Bank, shall provide employment to the workman as a sub staff, but the same shall be treated as a fresh regular appointment.

17. Further, it is also evident after considering the facts and circumstances mentioned above, the I Party-workman, is entitled to get the sub staff post with the II Party Bank. Admittedly, the I Party-workman, has not worked from the date of denial to provide work from 01.08.2003 to the present date. Absolutely, there is no contribution of the I Party-workman, during the said period. In order to balance the interest of both the parties, this Court is of the considered opinion that by directing the II Party-Bank, to give the posting of sub staff to the I Party-workman, will meet the end of justice, in the facts and circumstances of the present case. Having regard to the facts and circumstances, and long gap from the date of denial of work from 01.08.2003 to till date, it is found that the direction only has to be given to II Party-Bank to, provide employment to I Party-workman-M.H. Shankarappa, as a sub staff, on the fresh regular appointment basis only, with the II Party-Bank, in the interest of justice, equity and fair play. Thus, the points are answered, accordingly.

#### AWARD

The II party/management is directed to provide employment as a regular sub staff to the workman-Sh. M.H. Shankarappa, in the most expeditious manner, without raising any technical issues, and the said workman is entitled for employment as a sub staff, on the fresh regular appointment basis only, and he is not entitled to get any other benefits. The present reference is answered, accordingly without cost, for the peculiar facts, and special circumstances of the present matter.

(Dictated, transcribed, corrected and signed by me on 21<sup>st</sup> December, 2016)

V. S. RAVI, Presiding Officer

**List of Witness on the side of I Party:**

WW1 Shankarappa, I Party

**List of Witness on the side of II Party:**

MW1 Mohan Kumar, Manager of II Party-Bank

**Documents exhibited on behalf of I Party:**

S1.No.	DATE	EXHIBITS	DESCRIPTION OF DOCUMENT
1	20.04.1992	Ex W-1	Application copy of I Party
2	24.12.1997	Ex W-2	II Party letter
3	31.03.1998	Ex W-3	II Party letter with I Party application
4	15.11.1999	Ex W-4	II Party letter with enclosure
5	26.07.2000	Ex W-5	II Party letter
6	02.08.2000	Ex W-6	II Party letter with I Party application
7	15.02.2004	Ex W-7	I Party letter to II Party with postal receipts
8	15.02.2004	Ex W-8	I Party letter to ALC (c), Hubli
9	09.03.2004	Ex W-9	I Party letter to ALC (c), Hubli
10	24.06.2004	Ex W-10	I Party letter to II Party with AD card
11	30.08.2004	Ex W-11	Settlement entered before ALC, C, Hubli
12	26.10.2004	Ex W-12	I Party letter to II Party
13	30.11.2004	Ex W-13	I Party letter to ALC, Hubli
14	16.12.2004	Ex W-14	I Party letter to II Party with cour. receipt
15	05.01.2005	Ex W-15	DDBEA, Hubli letter to II Party
16	03.02.2005	Ex W-16	I Party letter to II Party
17	12.03.2005	Ex W-17	I Party petition to Directorate of Public Grievances, Delhi with AD Card
18	06.05.2005	Ex W-18	I Party letter to II Party
19	24.11.2005	Ex W-19	I Party letter to ALC, Hubli
20	13.12.2005	Ex W-20	II Party letter to ALC, Hubli with enclosures
21	25.12.2005	Ex W-21	I Party letter to ALC, Hubli
22	31.12.2005	Ex W-22	I Party letter to NSCC copy
23	13.02.2006	Ex W-23	Failure on Conciliation Report of ALC, (c), Hubli
24	30.11.2011	Ex W-24	II Party letter on RTI Application
25	21.12.2011	Ex W-25	II Party letter with information submitted on the Retired, Dismissed, Deceased, VRS employees from 01.01.1992
26		Ex W-26	Appointment details of sub staff

**Documents exhibited on behalf of II Party:**

S1.No	DATE	EXHIBITS	DESCRIPTION OF DOCUMENT
1	27.03.2000	Ex M-1	Seventh Bi-partite Settlement
2	10.04.2002	Ex M-2	Memorandum of Settlements

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 146.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ सं. 13/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-35011/04/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 146.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 11.01.2017.

[No. L-35011/04/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present :** Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Tuesday the 31<sup>st</sup> day of May, 2016/10<sup>th</sup> Jyaistha, 1938)

**ID 13/2015**

Union : The General Secretary,  
The Cochin Port Staff Association,  
Willington Island,  
KOCHI (KERALA) – 682009

By Adv. Shri. A. V. Xavier

Management : The Chairman,  
Cochin Port Trust,  
W/Island,  
COCHIN - 3.

By M/s. B. S. Krishnan, Associates

This case coming up for final hearing on 31.05.2016 and this Tribunal-cum-Labour Court on the same day passed the following:

#### AWARD

In exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute referred for adjudication is:

‘Whether the action of the management of Cochin Port Trust in promoting Male dressers of Head Dressers in the vacancies arising out of Female Head Dressers as per the Recruitment Rules and against the existing system of practice is correct? What relief the workman is entitled to?’

3. After receipt of the reference order No.L-35011/04/2014-IR(B-II) dated 24.02.2015, issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear and answer all material points relating to the dispute and to produce the documents to substantiate their respective contentions. On receipt of the summons, the parties entered appearance through counsel and submitted their pleadings.

4. The union filed claim statement with a prayer to hold that the action of the management, in not considering the grievances of Smt. V. D. Sudharma, for being promoted to the post of Head Dresser as per the existing practice and

precedent which had been followed for the last 34 years is not justifiable, that the action of the management in promoting the male dressers for the duty of supervising the dressing of female patients, dishonouring the advice of the conciliation officer to oblige to Section 22(2)d and 33 of the I.D Act, as illegal and in violation of the laws of the land. In the light of the management proceedings with the existing Recruitment Rule for promoting the Head Dressers this Hon'ble Court may be pleased to regulate the pay and allowance of Smt. V. D. Sudharma, retrospectively as if she had been promoted in line with her actual seniority had the promotions been made strictly in accordance with the Recruitment Rule from the beginning.

5. The management filed written statement denying the claim of the union and stated that the workmen are not entitled to the relief claimed.

6. After filing written statement by the management the matter was posted for filing rejoinder by the union. In the meantime, the union filed a statement which reads as follows:

*"The above I.D is at the stage of filing Rejoinder by the union.*

*The management has effected the promotion in dispute as per the existing Recruitment Rules. Hence the practice does not arise in the promotion Order No.C1/F24/Promotions/Class III & IV/2014-H dated 18.03.2014. So the matter specified in the Schedule to the Reference Order does not merit consideration.*

*In the said circumstances, the union does not pursue the matters specified in the Schedule to the Reference Order for adjudication by this Hon'ble Court.*

*This Hon'ble Court may be pleased to record the above Statement and pass an Award accordingly."*

7. Notice of this statement was given to the counsel for the management. The matter was heard in presence of the learned counsel appearing for the parties.

8. In view of the statement filed by the union that they are not pursuing the relief as requested in this ID and that the matter does not require consideration on merit: the statement filed by the union is recorded and that an award is passed holding that there is no subsisting dispute between the union and the management to be adjudicated as per this reference. The statement filed by the union shall form part of the award.

9. In the result an award is passed holding that there is 'no subsisting dispute' to be adjudicated as per this reference.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 31<sup>st</sup> day of May, 2016.

SASIDHARAN K., Presiding Officer

**APPENDIX** - **NIL**

**BEFORE THE HON'BLE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
ERNAKULAM**

**ID 13/2015**

The Chairman, : Management  
Cochin Port Trust,  
Willington Island,  
Kochi – 682009

**Vs.**

The General Secretary, : Union  
Cochin Port Staff Association,  
Willington Island,  
Kochi – 682009

**STATEMENT FILED BY THE UNION**

The above I.D. is at the stage of filing Rejoinder by the union.

The management has effected the promotion in dispute as per the existing Recruitment Rules. Hence the practice does not arise in the promotion Order No. C1/F24/Promotions/Class III & IV/2014-H dated 18.03.2014. So the matter specified in the Schedule to the Reference Order does not merit consideration.

In the said circumstances, the union does not pursue the matters specified in the Schedule to the Reference Order for adjudication by this Hon'ble Court.

This Hon'ble Court may be pleased to record the above Statement and pass an Award accordingly.

Dated this the 27<sup>th</sup> day of May, 2016

-Sd- Illegible

Advocate

-Sd- Illegible

Union

All the facts stated above are true.

-Sd- Illegible

Union

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 147.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 32/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/55/2016-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 147.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2016) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 11.01.2017.

[No. L-12012/55/2016-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 29<sup>th</sup> December, 2016

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 32/2016

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Overseas Bank and their workman)

#### BETWEEN :

Sri P. Kannapiran : 1<sup>st</sup> Party/Petitioner

#### AND

The Assistant General Manager : 2<sup>nd</sup> Party/Respondent

Indian Overseas Bank

Industrial Relations Department

Central Office, 763, Anna Salai

Chennai-600002

#### Appearance :

For the 1<sup>st</sup> Party/Petitioner : M/s K.M. Ramesh, Advocates

For the 2<sup>nd</sup> Party/Management : Set Ex-parte

## AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/55/2016-IR (B.II) dated 05.09.2016 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

*“Whether the action of the Management of Indian Overseas Bank in terminating the service of Sri P. Kannapiran, Temporary Messenger is legal and justified? If not, to what relief the workman is entitled?”*

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 32/2016 and issued notices to both sides. The petitioner has appeared through his counsel. There is no appearance for the Respondent.

3. The petitioner has not filed any Claim Statement in the matter. The counsel for the petitioner has made an endorsement to the effect that the petitioner is not proceeding with the dispute in view of ID 26/2016 regarding the same subject matter which is pending before this Tribunal. Accordingly, the ID is closed.

An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 29th December, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

### **Witnesses Examined:**

For the 1 <sup>st</sup> Party/Petitioner	:	None
For the 2 <sup>nd</sup> Party/Management	:	None

### **Documents Marked:**

#### **On the petitioner's side**

<b>Ex.No.</b>	<b>Date</b>	<b>Description</b>
	Nil	

#### **On the Management's side**

<b>Ex.No.</b>	<b>Date</b>	<b>Description</b>
	Nil	

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 148.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 1225/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-12011/243/2002-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 148.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1225/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 11.01.2017.

[No. L-12011/243/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD

Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 28<sup>th</sup> December, 2016

Reference: (CGITA) No. 1225/2004

The Dy. General Manager,  
Union Bank of India,  
High Court Way, Premchand House, Ashram Road,  
Ahmedabad (Gujarat) – 380009

...First Party

V/s

The Assistant Secretary,  
Gujarat Bank Workers' Union,  
Rambar, 8, Jagnath Plot, Post Box No. 10,  
Rajkot (Gujarat) – 360001

...Second Party

For the First Party : Shri B.K. Oza

For the Second Party : Shri Yogen Pandya

## AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/243/2002-IR(B-II) dated 31.03.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

## SCHEME

“Whether the action of the management of Union Bank of India, Ahmedabad in awarding punishment of compulsory retirement to Shri K.R. Ajwalia is legal and justified? If not, what relief is the concerned workman entitled to?”

1. The reference dates back to 31.03.2003. The second party submitted the statement of claim on 04.11.2004. The first party did not submit the written statement despite the fact that Shri B.K. Oza advocate submitted the vakalatpatra Ext. 3 on behalf of the first party but since the filing of the statement of claim, second party has been absent. Therefore, fresh notice was issued to both the parties vide Ext. 6 to appear on 21.04.2011 but the second party workman did not prefer to appear to prosecute the case as ex-parte. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of with the observation as under: “the action of the management of Union Bank of India, Ahmedabad in awarding punishment of compulsory retirement to Shri K.R. Ajwalia is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

का.आ. 149.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 325/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01. 2017 को प्राप्त हुआ था।

[सं. एल-12012/306/1999-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 149.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 325/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of UCO Bank and their workmen, received by the Central Government on 11.01.2017.

[No. L-12012/306/1999-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 28<sup>th</sup> December, 2016

##### Reference: (CGITA) No. 325/2004

The Regional Manager,  
UCO Bank, Zonal Office, Near Sanyas Ashram Road,  
Ahmedabad (Gujarat) – 380009  
...First Party

##### V/s

Miss Smitaben S. Patel,  
2-B, Ravi Kunj,  
Opp. Nakshi,  
Ahmedabad (Gujarat)  
...Second Party

For the First Party : Shri D.G. Shukla

For the Second Party : Shri V.K. Kazi

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/306/1999-IR(B-II) dated 25.05.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDEULE

“Whether the action of the management of UCO Bank, Regional Office, Ahmedabad in dismissing Miss Smitaben S. Patel, Asstt. Cashier-cum-Godown Keeper w.e.f. 30.03.1999 on the alleged charges of misconduct vide supplementary charge sheet dated 01.06.1998 to the original charge sheet no. DO/OAD/SSP/3/97-98 dated 05.07.1997 is legal and justified? If not, then to what relief the concern employees is entitled to?”

1. The reference dates back to 25.05.2000. The second party submitted the statement of claim Ext. 3 on 10.08.2000. The first party submitted the written statement Ext. 11 on 10.10.2001. Since then the second party workman has been absent and has also refrained to lead evidence however the advocate for the second party generally attends the tribunal. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of UCO Bank, Regional Office, Ahmedabad in dismissing Miss Smitaben S. Patel, Asstt. Cashier-cum-Godown Keeper w.e.f. 30.03.1999 on the alleged charges of misconduct vide supplementary charge sheet dated 01.06.1998 to the original charge sheet no. DO/OAD/SSP/3/97-98 dated 05.07.1997 is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 150.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 714/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/57/2000-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 150.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 714/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 11.01.2017.

[No. L-12012/57/2000-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 26<sup>th</sup> December, 2016

**Reference: (CGITA) No. 714/2004**

The Regional Manager,  
Bank of Baroda, Kalindi, 1,  
Mahavir Jain Society,  
Nr. S.T. Depot,  
Godhra (Gujarat) – 389001

...First Party

**V/s**

Smt. Telma John,  
Room No. B-100,  
Divda Colony, Tal. Kadana,  
Dahod (Gujarat)

...Second Party

For the First Party : Shri Mahesh K. Thakar

For the Second Party : Shri Sudhir J. Shah

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/57/2000-IR(B-II) dated 11.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDE

“Whether the action of the management of Bank of Baroda, Divda Colony Branch in terminating the services of Smt. Telma John, Part Time Sweeper w.e.f. 18.09.1999 orally without observing the provisions of Section 25-F, G and H of the Industrial Dispute Act, 1947 is legal and justified? If not, then what relief the concerned workman is entitled to?”

1. The reference dates back to 11.08.2000. The second party submitted the statement of claim Ext. 4 on 16.03.2001 and the first party submitted the written statement Ext. 5 on 16.07.2001. The second party workman submitted the

affidavit/examination in chief Ext. 13 on 07.02.2009 before the State Industrial Tribunal Central, Ahmedabad but on receiving the reference/record on transfer to this tribunal, fresh notices were issued on 23.09.2012 to appear on 23.05.2012 as parties had not been appearing. Again on 15.04.2014, fresh notices were issued to the parties to appear on 11.04.2014 but to no result and the second party did not appear for cross examination. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of in the absence of the cross-examination of the second party workman with the observation as under: “the action of the management of Bank of Baroda, Divda Colony Branch in terminating the services of Smt. Telma John, Part Time Sweeper w.e.f. 18.09.1999 orally without observing the provisions of Section 25-F, G and H of the Industrial Dispute Act, 1947 is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 151.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 1402/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/38/2003-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 151.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1402/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 11.01.2017.

[No. L-12012/38/2003-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 29<sup>th</sup> December, 2016

Reference: (CGITA) No. 1402/2004

The Manager,  
Bank of Baroda, Panch Hatadi,  
Navsari (Gujarat)

...First Party

V/s

Shri Nitin Kumar Sunderlal More,  
RamchandraNivas, Sambhaji Nagar,  
At.PO.Vijalpour, Taluka,  
Navsari (Gujarat)

...Second Party

For the First Party : Shri Mahesh Thakar

For the Second Party : Shri Prabhatsinh Parmar

## AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/38/2003-IR(B-II) dated 26.05.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

## SCHEDULE

“Whether Shri Nitinkumar Sunderlal More has put in ‘continuous service’ in the Bank of Baroda as per provisions of Section 25 B of the Industrial Disputes Act, 1947? If so, whether the action of the management of Bank of Baroda, Regional Office, Valsad through its officers in discontinuing/terminating the services of the workman Shri Nitinkumar Sunderlal More is legal, proper and justified? If not, what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

1. The reference dates back to 26.05.2003. On service of notices to both the parties, the second party Nitinkumar Sunderlal More submitted his statement of claim Ext. 5 alleging that he had been working as Peon in the first party bank, Bank of Baroda, in its several branches, herein after referred to as Bank of Baroda since 24.03.1998 honestly, sincerely and regularly. The branch manager of the bank used to direct him to work him other branches like Staion Road, Sayaji Road, Tarota Bazaar, Dudhiya Lake of Navsari and Kabil Pore, Kaliawadi, Dalalpore and Dabhol. On all these branches of the bank of Bank of Baroda, he performed his duties under the direct instruction from the manager of the first party bank, Bank of Baroda. He was used to be paid Rs.75/- and Rs.50/- as daily wages in the city and rural branches respectively by way of vouchers after getting their signature thereon. He used to do give ledgers, cheques, cheques book, account books to the official of the bank as per their requirement, used to prepare Tea and water to provide to the bank staff and also used to do other miscellaneous works entrusted to him from 10:30 AM to 07:30 PM. He was also called upon to do some duty even on Sunday holidays and Bank holidays. He was also paid bonus for the years 2000-01 vide cheque 0219679 dated 18.08.2001 for Rs.693/- while working at Tarota Bazaar Branch, Navsari of the Bank. He further alleged that he worked in the first party bank and its other braches as per the instructions of the manager of the bank, Bank of Baroda. He worked for more than 240 days in a calendar year, therefore, he had been in continuous service as per the provisions of the Section 25 B of the Industrial Disputes Act, 1947. He has also given the details of his working days since the calendar year 1998 to 2002 which are as below:

Year	Working Days
1998	134
1999	104
2000	259
2001	178
2002	167

He has further alleged that with an intent to cause interruption or artificial break in his service the bank used to pay and prepare vouchers in the name of Yogesh Vipinbhai Patel and Maheshbhai More despitess the fact that work was taken from him so as to break his service. He has to put his signatures in the form of Yogesh Vipinbhai Patel and Maheshbhai More. Thus Bank of Baroda misused his helplessness which was arbitrary, unfair legal practice, illegal and also against the principles of natural justice. Thus he entitled for regularization of service as per decisions of the Hon'ble High Court and Supreme Court. He has further alleged that he was not paid full daily wages and allowances as provided under the minimum wages act, therefore, the Bank of Baroda is also directed to pay the differences of all the wages and allowances for the period aforesaid. He requested the Bank of Baroda to make his services permanent but to no result, therefore, he applied for a job in Mufatlal Industry Limited but he was stopped by the Bank of Baroda to appear for interview. He further alleged that on 06.08.2002 at 04:00 PM, the Branch Manager of Tarota Bazaar, Navsari orally informed him. He discharged from the service of the bank without giving any notice in writing or wages in lieu of discharge notice and also without paying retrenchment compensation as per the requirement of Section 25 F of the Industrial Disputes Act, 1947. The said action was illegal, improper, amounting to victimisation, full of unfair labour practice and also against the principles of natural justice as he was not subjected to any departmental inquiry. He further alleged that he served the Bank of Baroda with a notice on 09.09.2002 through his advocate. Thus he has prayed for declaring his termination of his services on 06.08.2002 as illegal and improper and to reinstate him with back wages and all allowances as admissible in the service.

2. The first party Bank of Baroda submitted the written statement Ext. 11 denying all the allegations made in the statement of claim Ext. 5. However the Bank of Baroda has admitted that the workman Nitin More was working as a

daily wager in a temporarily manner. He was never issued any appointment letter. There was no permanent vacancy in the bank against which the appointment of this workman put have been required to be made. He was paid daily wages by way of vouchers. While working in the bank, he never raised his claim for employment or any other benefits. On the contrary, he offered him and accepted his position that he would not be entitled for any type of permanent employment or any other benefits. It is also admitted that he was paid daily wages as per his averments in the statement of claim. He was not handling the ledgers, cheques, pass books and account books of the bank. He was never asked to prepare and serve tea to the bank staff. He cannot be said to be in continuous service of the bank as he worked as daily wages in various branches of the bank as per his claim. He can also be subjected to criminal proceeding as he has admitted that he worked in the name of Yogesh Nitinbhai Patel and Maheshbhai More. He could not be issued identity card as he was not permanent employee of the bank. He was never asked to serve on Sunday and Bank Holidays. He was never stopped to appear for interview for a job in Mufatlal Industries Limited. The allegations of termination of service as illegal, vindictive, unreasonable and against the rules and principles of natural justice and also unfair legal practice are baseless. Thus he is not entitled for any relief as prayed in the statement of claim.

3. This reference earlier was pending in the State Industrial Tribunal where the first party did not lead his evidence, therefore, the case was ordered to proceed ex-parte against the first party on 23.07.2010. Later the case was transferred to this tribunal which was received on 06.12.2010. Consequently a notice Ext. 24 was issued to the manager, Bank of Baroda, PanchHatadi, Navsari (Gujarat) to appear on 15.02.2011 for leading evidence but none for the first party appear. Therefore this tribunal on 26.09.2011 on the application Ext. 25 of second party close the evidence of the first party despite giving several opportunities. Since then the first party did not try to get the order of ex-parte hearing recalled.

4. On the basis of the pleadings, the following issues are to be addressed in this proceeding which is as under:

- i. Whether Shri Nitinkumar Sunderlal More has put in 'continuous service' in the Bank of Baroda as per provisions of Section 25 B of the Industrial Disputes Act, 1947? If so, whether the action of the management of Bank of Baroda, Regional Office, Valsad through its officers in discontinuing/terminating the services of the workman Shri Nitinkumar Sunderlal More is legal, proper and justified?
- ii. To what relief the concerned workman is entitled and what other directions are necessary in the matter?

5. Issue No. i & ii :- Both the issues are interrelated, therefore, are decided together. The burden of prove of this issue lies on the workman who has submitted his affidavit/examination-in-chief Ext. 17 reiterating the averments made in the statement of claim which are not controverted or rebutted by the first party. Therefore, the evidence given by the second party is conclusive to the extent given by him in the affidavit Ext. 17. I have gone through the record which reveals that the workman worked in the bank for the period given in the table below:

Year	Working Days
1998	134
1999	104
2000	259
2001	178
2002	167

From the table, it appears that he worked for the calendar years 1998 to 2002 but he worked for more than 240 days only in the year 2000. Thus it appears that there was not sufficient work in the bank for the workman. Therefore, he worked for less than 240 days in every calendar except calendar year 2000. There is no documentary evidence that he worked on Sunday and Bank Holidays. It is also noteworthy that he was discharged from service on 06.08.2002 and in the year 2002 and 2001, he did work for only 167 and 178 days respectively. The preceding year as per the provisions of Section 25 B of Industrial Disputes Act in his case was 2001 wherein he works for only 178 days. Thus he cannot be said to be a workman under the provisions of the Industrial Disputes Act to be entitled for as per the provisions of Section 25 B of Industrial Disputes Act.

6. However as per the law laid down in the Senior Superintendent Telegraph (Traffic), Bhopal verses Santosh Kumar Seal, 2010 (6) SCC 773. It would be equitable to order the first party bank to pay Rs. 60000/- as compensation to the second party workman which will meet the end off justice.

7. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 152.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाईफ इंशोरेंस कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 16/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-17012/30/2000-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 152.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure, in the Industrial Dispute between the management of Life Insurance Corporation of India and their workmen, received by the Central Government on 11.01.2017.

[No. L-17012/30/2000-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 28<sup>th</sup> December, 2016

##### Reference: (CGITA) No. 16/2006

The Divisional Manager,  
LIC of India, Vadodara Division,  
7<sup>th</sup> Floor, Suraj Plaza -II, Sayajigunj,  
Vadodara (Gujarat) – 390005

...First Party

##### V/s

Shri Suresh N. Tailor,  
62, Kamlapark Society, HarniWarasia, Ring Road,  
Behind Mangalya S.,  
Vadodara (Gujarat) – 390001

...Second Party

For the First Party : Shri K.V. Gadlia

For the Second Party : Shri H.D. Kathroliya

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-17012/30/2000-IR(B-II) dated 02.03.2001 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDULE

“Whether the action of the management of Life Insurance Corporation of India, Baroda Division, Baroda in terminating the services of Shri Suresh N. Tailor w.e.f. 06.03.1999 vide order dated 06.03.1999 by way of removal from the services, is legal, proper and justified? If not, what relief the concerned workman is entitled to and what other directions are necessary in the matter?”

1. The reference dates back to 02.03.2001. In pursuance of the notices issued by the Tribunal to the parties, the Second Party workman hereinafter referred to a “workman” submitted the statement of claim Ex. 4 alleging that he had

been in employment in the First Party Life Insurance Corporation of India, hereinafter referred to as "First Party" as typist (SR. No.439658) since 1990 till he was served with a charge sheet on 6.4.1998 by the First Party. During his whole service, there was nothing adverse regarding his qualification confidence and conduct. He had also been receiving annual increments in his pay. The charge levelled against him in the charge sheet was that he altered/manipulated a Schedule Caste Certificated dated 1.5.1989 from the District Backward Class Welfare Officer, Vadodara. Thus, he fraudulently claimed the benefits available to the Schedule caste candidate in his recruitment as typist. He further alleged that he never carried out mutation or alteration in the school leaving certificate. The truth is that the school itself on the basis of the affidavit of his father changed his caste in the school leaving certificate and its record. He further alleged that he belongs to Hindu Mochi Caste but his father adopted the profession of tailor, therefore, the school by itself recorded his caste as Hindu Darji which was later changed by the school as Hindu Mochi on the basis of affidavit of his father. Therefore, the allegation of fraud, deceit and forgery levelled against him by the First Party is baseless. The First Party initiated departmental inquiry into the charge and held him guilty of the charge levelled against him and passed the order of termination from the service after issuing notice and detailed explanation submitted by the workman in a routine manner without considering the explanation properly. The matter went to reconciliation before the Assistant Commissioner of Labour, Central Government against the aforesaid unfair action but to no result. Therefore, this matter came to this Tribunal as reference for award. The workman in his claim prayed for quashing of the unjust and unfair termination of service with appropriate cost and consequential reliefs.

2. The First Party, Life Insurance Company of India submitted its written statement Ex. 7, denying all the averments of the statement made by the workman and submitted that the school leaving certificate of the workman was having caste as a Hindu Darji which was later altered into Hindu Mochi. The caste certificated obtained as Hindu Mochi was manipulated by the workman on the basis of the affidavit submitted by his father who was infact, a tailor or darji being his caste. The certificate was not issued by the competent authority. Thus, it was misconduct on the part of workman to obtain employment on the basis of a false caste certificate. Therefore, inquiry was held into the matter and finding him guilty of misconduct of manipulating the caste certificate as Hindu Mochi, his services were terminated after issuing him notice and considering his explanation.

3. The Presiding Officer, Industrial Court, Centre Baroda, after consideration the pleadings and evidence thereon on 31.3.2003 passed the award reinstating the workman with 75% back-wages. The matter went into writ before the Hon'ble Gujarat High Court. The Hon'ble Gujarat High Court quashed and set aside the award and remanded matter to the Tribunal for deciding afresh.

4. After creation of Central Government Industrial Tribunal, matter was taken up by the Central Government Industrial Tribunal and decided the reference quashing and setting aside the order of termination of services of workman under challenge 6.3.1999 and affirmed the order of Industrial Tribunal, Centre Baroda passed on 31.3.2003 with a direction to make compliance of the award within 60 days from the knowledge of the award.

5. The matter again went to the Hon'ble Gujarat High Court in Special Civil Application No. 5085 of 2008 with Civil Application No. 232 of 2015 therein and again the Hon'ble High Court by its order dated 12.8.2015 observed as under:-

*"Both the counsels have after making submissions on merits, and in view of the instructions given by the respondent –workman who is present in the Court, arrived at a consensus that looking to the lack of due advertence to the evidence to the record, let the order impugned be quashed and set aside and the matter be remanded back to the Tribunal for deciding afresh after affording opportunity to both sides on the basis of evidences already on record, meaning thereby, no further opportunities, so far as leading of evidence are concerned, is to be granted based upon the evidence on record. The counsels be permitted to make the submission and the entire dispute be decided as expeditiously as possible preferably within a period of six month from the date of receipt of this order."*

*In view of this, the present petition is disposed of. No order as to cost. Rule discharged."*

6. The matter was taken up as a fresh and both the parties were also asked to submit further evidence, if any, which they did not avail this opportunity.

7. In the present case, workman produced 24, 2 and 6 documents vide Ex- 13, 16 and 72. On consenting of both parties all these documents were exhibited as Ex- 53 to 69, Ex- 70 and 71 and Ex- 94 to 100. He also submitted an affidavit at Ex- 80 as examination chief stating on oath that he had been working as typist in First Party Organization for last ten years since, 28.2.1990, his father was a tailor therefore, he adopted the surname as Darji but the First Party Organization served with a chargesheet on 6 April, 1998, charging that he was Darji but he manipulated his caste a Hindu Mochi and got the benefits of Schedule Caste in the recruitment of his post of typist. He replied the chargesheet by explanation Ex-62 properly stating the reasons mentioned in the statement of claim but unfortunately the First Party initiated departmental inquiry and terminated his services since then he is unemployed. He further stated that he has been staying in joint family with his father and maintaining them. In his cross-examination he stated that in the inquiry

he was asked to submit the original school leaving certificate which was later turned back. He admitted that earlier his caste in the school record was Hindu Darji which was changed by the school on the basis of affidavit of his father as Hindu Mochi which was truth and fact and same has not been disputed by any competent authority of Gujarat State.

8. Below Ex-9 list total 34 documents are produced by the First Party institutions which are Ex. 19 to 52.

9. First Party examined at Ex-89, Principal of the School at Ex-90 Mr. Makwana, Clerk of the school at Ex-91, Inquiry Officer at Ex-92.

10. The principal states that, certificate below Ex-79 is prepared by him and it bears his signature. He admits that, this certificate was prepared as per the instructions of LIC. He states that, he has prepared this certificate as per the record of the school. He states that, School Leaving Certificate at Ex-82 is of his school, wherein Shri S. N. Tailor of the concerned student is as mentioned with caste "Hindu Cobbler". He admits his signature on copy at Ex-82. He states that, said true copy was given to LIC on demand of the LIC taking from the original. Original is produced before the Court. (The School Leaving Certificate at Ex-82 is at page No. 340 and general registration No. 321 is mentioned to it.) As against this, in the cross-examination he states that, when any student is admitted in the school the information which is provided by the guardian regarding surname and other details, are recorded in the record of the school. He has no right or jurisdiction to verify the facts whether it is true or false as submitted by the guardian. The certificate below Ex-79 is given according to G.R. but same is not at present with him. He states that, the handwriting and signature are similar to that of Exs- 82 and 83. He states that, the certificate below Ex-79 which is given before that the note is put in the said institution. At that time, he was not in service. He admits that, if original school leaving certificate is lost, in that case, duplicate certificate is issued after producing affidavit to that effect. Shri Vinod Dhulabhai Makwana, the witness No. 2 clerk of H. V. Shroff High School is examined on oath at Ex-90 stated that:-

*"I am serving in H. V. Shroff Memorial School. My post in the school is junior clerk. Last 15 years I am serving in the school. The school leaving certificate below Ex- 82 is prepared by me. My signature appears in the said certificate as preparing clerk. The certificate at Ex-83, wherein sub-caste "Hindu Mochi" is mentioned is the name is not written by me"*

As against this in the cross-examination he has said that:

*"Certificates below Ex-82 are issued by the school. I cannot say whether hand writing are similar for the facts stated in the certificate at Ex-82 Hindu Tailor Vadodara and Hindu Mochi at Ex-83."*

11. Shri Ashish Prabhakar Joshi, the witness of the company is examined on oath at Ex- 92. He has said in the examination in chief that:

*"I was serving as Manager in the first party institution in Vadodara in year 1998. In the case of second party, I was appointed as Inquiry Officer. The registered cover dated 12/11/1998 was issued by second party during the inquiry proceedings. I had opened on letter received in the said cover. The said letter was dated 10/11/1998. In the said cover there was only one letter and no such school leaving certificate of the second party was attached. Relevant note, I have made on the said cover. My signature appears against the said note at Ex- 86."*

As against this, in the cross-examination he has said that:

*"The Cover was received by me on 12/11/1998. It is true that, this cover was received on 12/11/1998 but no such note is made by me in the inquiry proceedings. It is true that, this cover after 6 days on dated 17/11/1998, I had opened in inquiry. During the proceedings, the objection pertaining to opening the cover, the note to this effect was made, but I have not investigated for the same. I cannot say whether second party had attached original school leaving certificate in the cover or not."*

12. I heard the arguments of both advocates appearing on behalf of respective parties and considered the oral and documentary evidence adduced therein.

13. The charge levelled against the workman is that he manipulated his caste certificate from Hindu Darji to Hindu Mochi for claiming the benefits of Schedule Caste fraudulently getting the post of Typist in the First Party Organization, Life Insurance Corporation of India. The charge levelled against the workman amounts to cheating defined in Section 415 of the Indian Penal Code. The Provisions of the Section 415 is reproduced as under:-

#### Section 415 in The Indian Penal Code

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind,

reputation or property, is said to “cheat”. Explanation.—A dishonest concealment of facts is a deception within the meaning of this section. Illustrations

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

14. To prove this charge, the workman in his affidavit has stated on oath that he belongs to Hindu Mochi Caste but his father adopted the profession of Tailoring instead of Hindu Mochi. Consequently, the Headmaster of his alma mater by his personal knowledge recorded his caste as Hindu Darji but his father on becoming aware of this mistake submitted an affidavit in the school to the effect that he is Hindu Mochi, accordingly his caste was altered by the Headmaster in the school record as Hindu Mochi. On the basis of this certificate, the District Social Welfare Officer, issued him a caste certificate of Hindu Mochi. He applied for the post of Typist before the First Party Organization annexing the aforesaid caste certificate and he was made successful as Schedule Caste candidate for the post of typist but after serving for 10 years first party without complaint with a malice served him with a charge sheet to this effect and initiated the Departmental Inquiry wherein his services were terminated.

15. First Party in rebuttal did not examine any witness like village head, said Headmaster of the school who admitted the workman as student in the school and the District Welfare Officer who were examined in the departmental inquiry. In the departmental inquiry the aforesaid witnesses plainly gave the statement that the school certificate to the effect of Hindu Mochi was issued by the school after alteration on the basis of the Affidavit of his father. And the Village head admitted that it is true that the workman was Hindu Mochi but his father has been doing the profession of tailoring therefore, the certificate of the Hindu Mochi should have been issued. Similarly, the District Social Welfare Officer stated in the departmental inquiry that he issued certificate formally on the basis of school leaving certificate.

16. But unfortunately, the inquiry officer in the departmental inquiry without any basis disbelieved the evidence of aforesaid witnesses and held the workman guilty of cheating. It is true that if the charge is true there is a case of cheating and a FIR into the matter ought to have been registered before the police but the department did not prefer this option being suspicious or non-confident of his finding. The Village head who lives in the village of the workman *prima facie* ought to have been believed unless a strong rebuttal is there like he is relation of the workman or some more relationships but it is not the case in the matter. Thus, the findings of the inquiry officer have no plausible or reasoned basis in holding that the workman was not a Hindu Mochi. He has failed to give any finding as to why he disbelieved the evidence of the village head, school headmaster and record of the school and also the evidence of District Social Welfare Officer.

17. It would have been reasonable on the part of First Party or inquiry officer to have made a reference for verification to the District Social Welfare Officer to inquire into the matter of caste of the workman, he did not do so

which gives a basis that the inquiry officer and First Party Organization initiated action arbitrarily and with malice for the reasons best known to them. It is also noteworthy that headmaster of the school stated in his evidence that the caste of the workman was altered into Hindu Mochi on the basis of the affidavit submitted by the Father of workman. Had this affidavit been false, it would have been a case of perjury and he would have been prosecuted for the same but none of the state authority initiated any action against the father of workman for perjury even after receiving the knowledge that the caste certificate was altered on the basis of workman's father.

18. Thus it is clear that controversy revolved round the alteration in caste certificate and benefit taken thereon in the recruitment but it would have been proper if it would have been enquired into the village where the workman permanently reside. Strangers cannot be the best evidence. Thus the finding of the enquiry officer is based on weak evidence. Had it been complained to the District Authority and enquired by them then it would have been proper because they would have taken strong evidence and have also prosecuted the workman and his father for cheating and perjury. Thus the alteration in caste certificate is based on unbelievable evidence and liable to disbelieved.

19. Thus, in view of the aforesaid evidence, I am of the view that the findings given by the inquiry officer was without any plausible evidence and reason and workman's services were arbitrarily terminated, therefore, the action taken by the First Party Organization is liable to be quashed and set aside.

20. Thus, on the basis the aforesaid reasons and evidence I decide the reference with the observation as under:-

“The action of the management of Life Insurance Corporation of India, Baroda Division, Baroda in terminating the services of Shri Suresh N. Tailor w.e.f. 06.03.1999 vide order dated 06.03.1999 by way of removal from the services, is not legal, proper and justified.”

21. Thus, First Party Organization is directed to reinstate the services of second party workman within 60 days from the date of knowledge of the award with 70% back-wages and other service benefits.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 153.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद (गुजरात) के पंचाट (संदर्भ सं. 58/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-35011/01/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 153.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 11.01.2017.

[No. L-35011/01/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 30<sup>th</sup> December, 2016

**Reference: (CGITA) No. 58/2014**

The Chairman,  
Cochin Port Trust,  
W. Island,  
Cochin

...First Party

V/s

The General Secretary,  
The Cochin Port Staff Association,  
W. Island,  
Cochin

...Second Party

For the First Party : None

For the Second Party : None

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-35011/01/2014-IR(B-II) dated 13.06.2014 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDELE

- i. "Whether the action of the management of Cochin Port Trust in withdrawing the honorarium @ 7.5% of basic pay paid to 20 member of employees of Power House Section of Electrical Section from October 2011 without issuing 21 days notice u/s 9A of the I.D. Act is justified?"
- ii. "Whether the action of the management of Cochin Port Trust in stopping the honorarium to the employees during the pendency of conciliation proceedings amounts to violation of Section 33 of I.D. Act?"
- iii. "What relief the workmen are entitled to?"

1. The reference dates back to 13.06.2014. The Cochin Port Trust vide letter dated 09.05.2016, Ext. 7 and Shri Ravi Kumar, Desk Kumar (IR-B-II), Government of India, Ministry of Labour and Employment vide their letter dated 16.05.2016, Ext. 8 have informed that the matter relates to Cochin, therefore, this reference be cancelled.

2. Thus in the light of the aforesaid letter, the aforesaid reference is cancelled. Shri Ravi Kumar, Desk Kumar (IR-B-II), Government of India, Ministry of Labour and Employment be informed that the reference has been cancelled as requested.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 154.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 32/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 154.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 10<sup>th</sup> day of November, 2016INDUSTRIAL DISPUTE L.C.No. 32/2007

## Between :

Sri Dune Laxmipathi,  
 S/o Bheemaiah,  
 C/o Smt. A. Sarojana,  
 Advocate, Flat No.G7,  
 Rajeshwari Gayatri Sadan,  
 Opp: Badruka Jr. College for Girls,  
 Kachiguda, Hyderabad

...Petitioner

## AND

1. The General Manager,  
 M/s. Singareni Collieries Company Ltd.,  
 Mandamarri Area, Mandamarri,  
 Adilabad District.
2. The Dy. CME/Superintendent of Mines,  
 KK-5 Incline,  
 M/s. Singareni Collieries Company Ltd.,  
 Mandamarri, Adilabad District

...Respondents

## Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
 For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

## AWARD

Sri Dune Laxmipathi who worked as Coal filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. P/MM/7/2/01/4005 dated 25.8.2001 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler and later he was confirmed as Coal Filler. Petitioner was regular to his duties till the year 1999. But during the year 1999, the Petitioner suffered with illness and family problems. While the matters stood thus, charge sheet dated 23.1.2000 was issued by the Respondents alleging that the Petitioner absented for duty during the year 1999, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. P/MM/7/2/01/4005 dated 25.8.2001. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1999 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered several years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/MM/7/2/01/4005 dated 25.8.2001 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to

reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc.

**3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondent's company on 15.12.1988 as Badli Filler and he was regularised as Coal filler on 1.9.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry on the date fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show-cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner admitting the validity of the domestic enquiry to be legal and valid, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 5.3.2009.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Dune Laxmipathi is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. Even in his show-cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness the Petitioner could not be able to be regular in his duty, he has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 41 years, he is now aged about 50 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being a young and energetic man has already realised his mistake and is coming forward to work, atleast one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Dune Laxmipathi is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Dune Laxmipathi is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

### ORDER

It is ordered that the workman Sri Dune Laxmipathi be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 10<sup>th</sup> day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 155.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 33/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 155.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated the 9<sup>th</sup> day of November, 2016

**INDUSTRIAL DISPUTE L.C.No. 33/2007****Between :**

Sri Nathariki Rajam,  
S/o Mallaiah,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

**AND**

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Mandamarri Area, Mandamarri,  
Adilabad District.
2. The Superintendent of Mines,  
KK-5 Incline,  
M/s. Singareni Collieries Company Ltd.,  
Mandamarri, Adilabad District

...Respondents

**Appearances :**

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
For the Respondent : M/s. S.M. Subhani, Advocate

**AWARD**

Sri Nathariki Rajam who worked as Coal filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. P/MM/7/2/00/4149 dated 26.9.2000 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

**2. The averments made in the petition in brief are as follows:**

The Petitioner was appointed as badli filler in the year 1990 and later he was promoted as Coal Filler in the year 1995. The Petitioner was regular to his duties till the year 1998. But during the year 1999, the Petitioner suffered with illness and other family problems. While the matters stood thus, charge sheet dated 31.1.2000 was issued by the Respondents alleging that the Petitioner absented for duty during the year 1999, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. P/MM/7/2/00/4149 dated 26.9.2000. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1999 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered 10 years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P/MM/7/2/00/4149 dated 26.9.2000 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondents filed counter denying the averments made in the petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondents' company on 24.9.1990 as Badli Filler and he was regularised as Coal filler on 1.9.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner admitting the validity of the domestic enquiry to be legal and valid, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 5.3.2009.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Nathariki Rajam is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness and family problems, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness and family problems he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and family problems, the Petitioner could not be able to be regular in his duty, the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 41 years, he is now aged about 50 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work, atleast one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Nathariki Rajam is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Nathariki Rajam is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But in this case, the Petitioner has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is only entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

### ORDER

It is ordered that the workman Sri Nathariki Rajam be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 9<sup>th</sup> day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 156.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 100/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 156.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 8<sup>th</sup> day of November, 2016INDUSTRIAL DISPUTE L.C.No. 100/2007

## Between :

Sri Sangam Jampaiah,  
 S/o Sangam Laxmaiah,  
 C/o Smt. A. Sarojana,  
 Advocate, Flat No.G7,  
 Rajeshwari Gayatri Sadan,  
 Opp: Badruka Jr. College for Girls,  
 Kachiguda, Hyderabad

...Petitioner

## AND

1. The General Manager,  
 M/s. Singareni Collieries Company Ltd.,  
 Srirampur Area, Srirampur,  
 Adilabad District.
2. The Superintendent of Mines,  
 M/s. Singareni Collieries Company Ltd.,  
 RK-6 Incline, Srirampur  
 Adilabad District

...Respondents

## Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
 For the Respondent : Shri S.M. Subhani, Advocate

## AWARD

Sri Sangam Jampaiah who worked as Coal filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring the proceeding No. RKP/Per/R/008/5927 dated 26.10.2002 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler on 10.9.2000 in 1<sup>st</sup> Respondent's company and rendered his services sincerely. While the matter stood thus, a proceeding was initiated against the Petitioner and notice dated 7.1.2000 was issued to him by the Respondents alleging that the Petitioner absented for duty during the year 1999, which amounts to misconduct under company's Standing Order No.25.25 and it is also stated that the charge sheet was sent to the Petitioner's house which was returned undelivered, and as such a paper advertisement was issued, advising the Petitioner to attend for enquiry, and as the Petitioner did not attend the enquiry on the Scheduled date, an ex parte enquiry was conducted and he was dismissed from service. The Petitioner was undergoing treatment in his native village and he was not aware of either issuance of charge sheet or publication made by the Respondents in the newspapers. The Petitioner could have certainly participated in the enquiry, if really he was in receipt of the charge sheet or notice of paper publication. It is stated that the Petitioner was unable to perform his duties regularly during the year 2001 only on account of his ill-health and other family problems, for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 26.10.2002. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered about 3 years of continuous service in the Respondents' management. He remained absent from duty only on account of his sickness and family problems which ought not to have been treated as a serious misconduct. The Petitioner made the above stated submissions, but without considering any of his submissions, the Petitioner was dismissed from service

vide one office order. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. RKP/Per/R/008/5927 dated 26.10.2002 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner had remained absent unauthorizedly from duty without sufficient cause on a number of days and attended four days for duty during the calendar year 2001. A charge sheet was sent to his last known home address as per the procedure as he was not attending for duty, which was returned undelivered. Subsequently, the same was published in Vartha daily newspaper dated 25.5.2002 advising the Petitioner to attend an enquiry fixed on 5.6.2002. The Petitioner neither submitted any explanation to the charge sheet nor attended the enquiry, as such an ex parte enquiry was conducted on 5.6.2002 wherein the charges levelled against the Petitioner were proved. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving an opportunity to make representation against the findings made in the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record, and found that there was no extenuating circumstances to take a lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show-cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 20.2.2009, in view of the memo filed by the counsel for the Petitioner, stating therein, not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Sangam Jampaiah is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No. I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his illness and other family problems, the Petitioner could not be able to attend his duty sincerely. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case but, without considering any of the submissions of the Petitioner, the authority has passed one cryptic and unreasoned order and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' management is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to regular in his duty. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the Petitioner did not participate and the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the Tribunal and is ready to provide bread and butter to his family members. When he has already realised his mistake atleast one chance should be given

to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender. When punishment has been imposed, his past conduct has not been considered. While imposing capital punishment to his employees, the management should think of the condition of the worker as well as his family members so also his past conduct. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Sangam Jampaiah is not legal and justified.

This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Sangam Jampaiah is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the Tribunal with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But, in the circumstances stated above, the Petitioner is not entitled to get all the relief as claimed in his petition. But the Petitioner is entitled to be given a chance to work in the Respondent's management.

Thus, Point Nos. II & III are answered accordingly.

### ORDER

It is ordered that the workman Sri Sangam Jampaiah be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain minimum mandatory 20 musters every month and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will be terminated without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 8<sup>th</sup> day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 157.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 123/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 157.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated the 8<sup>th</sup> day of November, 2016

#### INDUSTRIAL DISPUTE L.C.No. 123/2007

##### Between :

Sri Akula Satyanarayana,  
S/o Ramulu,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7, Ground Floor,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

##### AND

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Srirampur (P) Area, Srirampur,  
Adilabad District.
2. The Colliery Manager,  
M/s. Singareni Collieries Company Ltd.,  
RK-New Tech,  
Srirampur (P) Area, Srirampur,  
Adilabad District.

...Respondents

##### Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates  
For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

#### AWARD

Sri Akula Satyanarayana, who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. SRP/PER/35.A/02/5693 dated 13.12.2002 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

##### 2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as badli filler on 5.4.2000 in 1<sup>st</sup> Respondent's company and rendered his services sincerely. While the matter stood thus, charge sheet dated 15.2.2002 was issued to him by the Respondents alleging that the Petitioner absented for duty during the year 2001, which amounts to misconduct under company's Standing Order No. 25.25. Subsequently an enquiry was conducted by the Department without the knowledge of the Petitioner and proceeding dated 13.12.2002 was issued consequent upon the ex parte enquiry conducted and lastly the Petitioner was dismissed from service. It is submitted that the Petitioner was suffering from ill-health and his father seriously ill and expired on 2.9.2001. It is also submitted that the Petitioner was not aware of issuance of the charge sheet, or its

publication in the newspaper due to which he could not be able to participate in the enquiry. He remained absent from duty only on account of his sickness and also due to his father's ill-health which ought not to have been treated as a serious misconduct. The Petitioner made the above stated submissions, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 13.12.2002. It is also stated that the action of the Respondent management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. SRP/PER/35.A/02/5693 dated 13.12.2002 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondents filed counter denying the averments made in the petition, with averments in brief as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry fixed on 7.5.2002 and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. The Petitioner admitted his mistake before the Enquiry Officer. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. The Petitioner in his deposition before the Enquiry Officer stated that during the year 2001 due to his ill health he remained absent from duties and assured to be careful in his duty and work without absence in future. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show-cause notice giving an opportunity to make representation against the findings of the enquiry report. It is further stated that as the charge levelled against the Petitioner was proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take any lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuance of charge sheet, and receipt of show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 27.1.2010, basing on the memo filed by the counsel for the Petitioner, which had been filed not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Akula Satyanarayana is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.1:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his father's illness, and his illness the Petitioner could not be able to attend his duty sincerely. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness and the illness of his father he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority without considering the genuineness of the absenteeism has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum muster in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to illness of the Petitioner and his father, the Petitioner could not be able to be regular in his duty and a proceeding was initiated for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless

and unable to provide a square meal to his family members. He being the sole bread earner of his family has already realised his mistake and has taken shelter in the court and is ready to provide bread and butter to his family members. When the Petitioner has already realised his mistake atleast one chance should be given to him for reinstatement into service. Further more, while imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Akula Satyanarayana is not legal and justified.

This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Akula Satyanarayana is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But the Petitioner is not entitled to get any other relief as claimed in his petition. But he is only entitled to be given a chance to work in the Respondent's management to maintain his livelihood.

Thus, Point Nos. II & III are answered accordingly.

### ORDER

It is ordered that the workman Sri Akula Satyanarayana be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 days in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 8<sup>th</sup> day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 158.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 133/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 158.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 133/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated the 8<sup>th</sup> day of November, 2016

#### INDUSTRIAL DISPUTE L.C.No. 133/2007

##### Between :

Sri Merugu Venkaty,  
S/o Posham,  
C/o Smt. A. Sarojana,  
Advocate, Flat No.G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

##### AND

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
BPA (P) Area, Bellampalli,  
Adilabad District.

2. The Colliery Manager,  
M/s. Singareni Collieries Company Ltd.,  
Goleti No. 1 Incline,  
Bellampalli, Adilabad District.

...Respondents

##### Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. M.V. Hanumantha Rao, Advocate

#### AWARD

Sri Merugu Venkaty who worked as Badli filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. P.BAP/129/1934 dated 22.7.1999 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

##### 2. The averments made in the petition in brief are as follows:

The Petitioner was appointed as Badli Filler on 28.9.1985 and subsequently was regular to his duties. While the matter stood thus, a proceeding dated 22.7.1999 was issued to him by the Respondents alleging that the Petitioner absented for duty during the year 1998, which amounts to misconduct under company's Standing Order No.25.25 and it is also stated that the charge sheet was sent to the Petitioner's house which was returned undelivered, as such a paper advertisement was issued, advising the Petitioner to attend for enquiry and as the Petitioner did not attend the enquiry on the scheduled date, an exparte enquiry was conducted and he was dismissed from service. The Petitioner was undergoing treatment in his native village and he was not aware of either issuance of charge sheet or publication made by the Respondents in the newspapers. The Petitioner could have certainly participated in the enquiry, if really he was

in receipt of the charge sheet or notice of paper publication. It is stated that the Petitioner was unable to perform his duties regularly during the year 1998 only on account of his ill-health and other family problems, for this he could not attend his duties sincerely, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 22.7.1999. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered about 14 years of continuous service in the Respondents' management. He remained absent from duty only on account of his sickness which ought not to have been treated as a serious misconduct. The Petitioner made the above stated submissions, but without considering any of his submissions, the Petitioner was dismissed from service vide office order dated 22.7.1999. The Petitioner approached the Respondents to consider his case sympathetically but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P.BAP/129/1934 dated 22.7.1999 issued by the Respondents as illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc.

**3. The Respondents filed counter denying the averments made in the claim petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner has been dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner had remained absent unauthorizedly from duty without sufficient cause on a number of days and attended four days for duty during the calendar year 1997. A charge sheet was sent to his last known home address as per the procedure as he was not attending for duty, which was returned undelivered. Subsequently, the same was published in Vartha daily newspaper dated 19.9.1998 advising the Petitioner to attend an enquiry fixed on 23.9.1998. The Petitioner neither submitted any explanation to the charge sheet nor attended the enquiry, as such an ex parte enquiry was conducted on 23.9.1998 wherein the charges levelled against the Petitioner were proved. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show-cause notice giving an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, Respondent No.1 was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet, and after receiving the show-cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition be dismissed in limini.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 30.6.2009, in view of the memo filed by the counsel for the Petitioner, stating therein, not to challenge the validity of the domestic enquiry.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Merugu Venkaty is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to his illness and other family problems, the Petitioner could not be able to attend his duty sincerely. But on account of absenteeism capital punishment of dismissal from service has been imposed on the Petitioner. When the Petitioner has taken a stand that due to illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case but, without considering any of the submissions of the Petitioner, the authority has passed one cryptic and unreasoned order and has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' management is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to illness the Petitioner could not be able to regular in his duty. In fact, due to illness the Petitioner has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the Petitioner did not participate and the charges levelled against the Petitioner were proved. For this, capital punishment has been imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the Tribunal and is ready to provide bread and butter to his family members. When he has already realised his mistake atleast one chance should be given to him for reinstatement into service. Admittedly several modes of punishment are enumerated in company's Standing Orders. The Petitioner is a first offender and has worked more than 12 years under the Respondents. When punishment has been imposed, his past conduct has not been considered. While imposing capital punishment to his employees, the management should think of the condition of the worker as well as his family members so also his past conduct. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action of the management in imposing the punishment of dismissal from service to Sri Merugu Venkaty is not legal and justified.

This point is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Merugu Venkaty is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the Tribunal with a prayer for reinstatement into service he should be given a chance to serve for his family members. Now, after dismissal of service the Petitioner has become jobless and he being the sole earning member of his family, is unable to provide a square meal to his family members. In such a circumstances, atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondents' management. But, in the circumstances stated above, the Petitioner is not entitled to get all the relief as claimed in his petition. But the Petitioner is entitled to be given a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

#### ORDER

Proceeding No. P.BAP/129/1934 dated 22.7.1999 issued by Respondent No.1 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Merugu Venkaty be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to either maintain minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 8<sup>th</sup> day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

#### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 159.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 20/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/46/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 159.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Nav Kajora Colliery of M/s. ECL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22012/46/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### IN THE COURT OF CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

*Ref.: Ministry's Order No. L-22012/46/2008-IR (CM-II) dated 27.07.2009*

*This office Reference No. 20 of 2009 dated 20.08.2009*

Management of Nav Kajora Colliery of M/s. E.C.L

v/s

Late Sri Devraj Swai

SETTLEMENT IN LOK ADALAT

Held on 04<sup>th</sup> October, 2016 at CGIT-cum-LC, Asansol.

#### AWARD

On amicable settlement by both parties the dispute is resolved in the Lok Adalat. The Form 'H' containing the terms of agreement of this settlement to be executed by both the parties in due course. Award is passed and signed accordingly.

PRAMOD KUMAR MISHRA, Presiding Officer

#### IN THE COURT OF CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT ASANSOL

LOK ADALAT SETTLEMENT

PLACE : Asansol

DATE : 04.10.2016

**Reference No. 20 of 2009**

Nay Kajora Colliery of M/s. ECL

v/s

Late Sri Devraj Swai

Both the parties hereby mutually and amicably settle up the dispute for the interest of both sides and to help securing a healthy & conducive relationship for maximization of output in the industry.

#### Terms :-

Management of M/s. Eastern Coalfields Limited has agreed to provide employment to the dependent of Late Sri Devraj Swai.

Sd- Illegible

Employer /Management

Sd- Illegible

Employee / Union

(Pramod Kumar Mishra)  
Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 160.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 66/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/424/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 160.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Nimcha Colliery of M/s. ECL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22012/424/2003-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 66 OF 2004

#### PARTIES :

The management of Nimcha Colliery of M/s. E.C.L.

v/s

Sri Chhotelal Bouri

#### REPRESENTATIVES :

For the management : Sri, P. K. Goswami, Learned Advocate

For the union (Workman) : Sri S. K. Pandey, Union Representative

Industry : Coal

State : West Bengal

Dated : 02.12.2016

#### AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/424/2003-IR(CM-II)** dated 04.11.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDELE

“Whether the action of the management of Nimcha Colliery of M/s. ECL in dismissing Sri Chhotelal Bouri from services vide order dated 5<sup>th</sup>/12<sup>th</sup> July, 1999 is legal and justified? If not, to what relief the workman is entitled?”

1. Having received the Order **NO. L-22012/424/2003-IR(CM-II)** dated 04.11.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **66 of 2004** was registered on 18.11.2004. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Chhotelal Bouri has alleged in his written statement that he was in employment in company as Under Ground Loader at Nimcha Colliery of M/s. Eastern Coalfields Limited. Due to sickness which was beyond his

control he was absent from duty w.e.f. 16.12.1998 to 31.01.1999. Being declared fit Sri Chhotelal Bouri reported for duty to the management but he was not allowed to resume his duty and he was served Chargesheet vide Chargesheet No. NC/CS/PER/99/47 dated 31.01.1999. The workman replied to the Chargesheet and appeared before the Enquiry Officer. He also submitted his Sick Certificates etc. for perusal of the Enquiry Officer. But workman was dismissed from service of company vide Dismissal Order SAT/CS/PERS/C/99/431(B) dated 05/12.07.1999 by the area management arbitrarily without giving him any proper opportunity to defend himself during enquiry proceeding. The dismissal of Sri Chhotelal Bouri from service of the company is illegal and unjustified. The workman has prayed that the Tribunal may kindly direct the Nimcha Colliery of M/s. Eastern Coalfields Limited to reinstate the workman in service with full back wages and all consequential benefits.

3. The Agent of Nimcha Colliery of M/s. Eastern Coalfields Limited has alleged in his written statement that the concerned workman Sri Chhotelal Bouri was absent from duty from 16.12.1998 without any reason. He did not pray for any leave as such his absence was declared unauthorized. Chargesheet vide Reference No. NC/CS/Per/99/47 dated 30.01.1999 under Clause 17 (i) (n) of standing order was issued seeking clarification of his absent form 16.12.1998. Concerned workman duly responded at the enquiry accompanied by his co-worker. He availed all the opportunities to which he was entitled and no dispute or any objection was put to the affect of proceeding. The Enquiry Officer conducted the enquiry in presence of both the parties and after perusing all the materials found the charges to be proved. The concerned workman had been habitual absentee from duty for which he has been chargesheeted on several occasions. He was punished (i) Giving warning on the basis of Chargesheet vide ref. NC/CS/Per/96/972 dated 20.06.1996, (ii) Allowed by warning vide letter No. NC/W/97/1545 dated 08.04.1997, (iii) Allowed by warning vide letter no. NC/CS/Pers/97/2033 dated 21.08.1997. The past attendance was not praise worthy which was 80 days in the year 1996, 54 days in the year 1997, 58 days in the year 1998. The concerned workman does not deserve any leniency as such he was dismissed. The reference is made on the basis of failure of conciliation proceeding which was stared on an application submitted by General Secretary of Koyala Mazdoor Congress on 21.03.2003 to the Assistant Labour Commissioner (Central). The Union is responsible for delay in raising the dispute. The action of management is legal and justified. The concerned workman is not entitled to any relief.

4. The workman has filed following documentary evidences :

- (i) Copy of the Letter of Dismissal, (ii) Copy of the Enquiry Report, (iii) Copy of the Medical Certificate, (iv) Copy of the Chargesheet.

The delinquent workman, Sri Chhotelal Bouri has filed affidavit in his oral evidence. He has been cross-examined by the learned advocate of Nimcha Colliery of M/s. Eastern Coalfields Limited.

The management has filed following documentary evidences :

- (i) Copy of the Warning Letter No. 1966 dated 10.10.1996, (ii) Copy of the Show Cause Notice No. 798 dated 29.04.1999, (iii) Copy of the Dismissal Order, (iv) Copy of the 2<sup>nd</sup> Show Cause Notice, (v) Copy of the Enquiry Report, (vi) Copy of the Enquiry Proceeding, (vii) Copy of the Cross-examination of co-worker, (viii) Copy of the Notice of Enquiry dated 05.04.1999, (ix) Copy of the Notice of Enquiry dated 01.03.1999, (x) Copy of the Chargesheet.

The Agent of Nimcha Colliery of M/s. Eastern Coalfields Limited has not filed any oral evidence.

5. I have heard the argument of Sri S. K. Pandey, learned union representative on behalf of Sri Chhotelal Bouri, delinquent workman and Sri P. K. Goswami, learned advocate on behalf of Nimcha Colliery of M/s. Eastern Coalfields Limited.

6. Sri S. K. Pandey, learned union representative has argued that due to sickness, the workman concerned could not attend his duty under compelling circumstances. He filed Sick Certificate regarding his sickness but it was not considered by the Enquiry Officer. He was not afforded opportunity to put his defence. The Enquiry Officer was biased. The enquiry was vitiated. He has argued that there is no charge of habitual of absenteeism in Chargesheet No. NC/CS/PER/99/47 dated 31.01.1999 issued to him.

On the other hand P. K. Goswami, learned advocate has argued that the enquiry is fair and bona fide. The workman assisted by his co-worker. He participated in the enquiry. For previous absence he was warned in the past. He has been maintaining his family therefore he is not entitled for any back wages. He relied on : *J. Chelameswar & Abhay Manohar Sapre, JJ. Prem Nath Bali v/s Registrar, High Court of Delhi, 2016 (1) CHN (SC) 187.*

7. It is admitted fact by both the parties that delinquent workman Sri Chhotelal Bouri had been in employment of the company as Under Ground Loader at Nimcha Colliery of M/s. Eastern Coalfields Limited. It is also admitted fact that he has been absent from duty from 16.12.1998 to 31.01.1999. As per delinquent workman he has been sick under

compelling circumstance he had to remain absent from duty which has been denied by the management of Nimcha Colliery of M/s. Eastern Coalfields Limited. Nimcha Colliery of M/s. Eastern Coalfields Limited has filed Order regarding previous absence and copy of Chargesheet. For previous absence he had been warned. Sri Chhotelal Bouri has been issued Chargesheet NC/CS/PER/99/47 dated 31.01.1999 for the period of absence from 16.12.98 under Clause - 17 (i)(n) of standing order. Neither he has been charged for previous absence nor there any recital of previous absence in the Chargesheet. He replied to the Chargesheet, his reply being unsatisfactory the management decided to hold domestic enquiry against the delinquent workman, Sri Chhotelal Bouri.

**8.** From perusal of enquiry proceeding it appears that the Enquiry Officer recorded the evidence of Sri M. Shaw, management witness and relied on the documents namely, Form 'H' Register. The name of witnesses and the list of document which are proposed to be relied by the Enquiry Officer must be mentioned in the Chargesheet issued to the workman.

*"Reasonable Opportunity"* means not only framing of charge against the delinquent workman and asking for explanation, but it means more. The employee concerned must be apprised of the material on which the charges were framed so that he could have a proper opportunity of testing that material. The rules of natural justice require that when a fact is sought to be proved it must be supported by statement. Therefore all the materials as well as witnesses on which The Enquiry Officer or Department is likely to be relied, should be supplied in advance to enable the Chargesheeted employee to give proper explanation and defend himself. The employer can't justify his action on any grounds other than those contained in the Chargesheet. It is incumbent upon the Enquiry Officer / Employer to give sufficient particulars in the Chargesheet itself. Any amount of evidence lead in the enquiry is no substitute if Chargesheet issued to the Chargesheeted employee is deficient of these particulars. Any Chargesheet which fails to comply with the principles of natural justice is no Chargesheet at all.

**9.** The Hon'ble Apex Court in **Meenglas Tea Estate v/s Its workmen, AIR 1963 SC 1719** has observed that :

*"It is elementary principle that a person who is required to answer the charge must know not only the accusation but also the testimony by which the accusation is supported."*

**10.** The concerned workman has challenged the enquiry due to non-compliance of principles of natural justice on the basis that he was not afforded opportunity to defend himself during the enquiry proceeding. From perusal of Enquiry Report it is apparent that the delinquent workman participated in enquiry with his co-worker. The statement of management witness Sri M. Shaw was recorded on 16.04.1999. The delinquent workman with assistance of co-worker cross-examined the management witness on 16.04.1999, but he was not afforded opportunity to put his defence evidence. Opportunity to lead defence evidence is valuable right available to the delinquent workman. He has right to rebut the evidence submitted against him during the departmental enquiry. After 16.04.1999 the Enquiry Officer submitted his report on 30.04.1999 without affording opportunity of defence evidence to the delinquent workman. Natural justice requires that the enquiry should be held impartially, objectively and after giving opportunity of hearing to the delinquent workman. Fair opportunity and fair trial are elements of principles of natural justice which are always applied to the facts and circumstances of the case. The two elements of reasonable opportunity of being heard are that: Firstly, An opportunity to be heard must be given & Secondly, This opportunity must be reasonable. Care must be taken to ensure that the enquiry does not become empty formalities.

**11.** The Hon'ble Supreme Court **State of Uttaranchal v/s V. Kharak Singh, 2008 (118) FLR page 1112** has enumerated some of the basic principles regarding conducting the departmental enquiry and consequences in the event if these principles are not adhered to, the order is to be quashed. These are namely :

*"i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.*

*ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.*

*iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him."*

**12.** Even in cases, where enquiry has been held by the employer and a finding on the misconduct is arrived at the tribunal can differ with the finding in a proper case like this to hold that no misconduct is proved, if there is violation in principles of natural justice in conducting the departmental enquiry. To come to the conclusion the Tribunal will have

to reappraise the evidence on the record. The tribunal may hold that the misconduct itself is not proved due to violation of principle of natural justice or that the misconduct proved does not warrant the punishment of dismissal. The Tribunal has to see whether punishment imposed by the employer is commensurate with the gravity of the misconduct committed by the delinquent employee.

The Hon'ble Apex Court in **Chairman -cum- Managing Director, Coal India Limited and Another v/s Mukul Kumar Choudhury and Others, 2009 (123) FLR 601 (SC)** has held that :

*“The award of punishment is which is grossly in excess to the allegations can not claim immunity and remains opens for interference under scope of judicial review. It has further being held that one of test to be applied while dealing with the question of quantum of punishment would be; would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.”*

**13.** The principle of doctrine of proportionality is a well recognized one to ensure that the action of employer against the workman does not infringe their fundamental and statutory rights. This important doctrine has to be followed by the employer at the time of taking disciplinary action against their employees to satisfy the principles of natural justice and safeguard the rights of workmen. The workman has been absent from 16.12.1998 to 31.01.1999 near about for 1 (One) month and 15 (Fifteen) days. It has to be kept in mind that the delinquent workman is illiterate and belongs to Schedule Cast community. As per his evidence he was sick and he submitted treatment papers but he failed to send it to concerned authority. The Enquiry Officer not only failed to supply copies of documents and list of witnesses but also did not afford opportunity to lead defence evidence to the delinquent workman. The Enquiry Officer conducted the enquiry in utter violation of principles of natural justice. Several factors are required to be considered before passing the order of punishment. Not only the misconduct and gravity of charge but also validity of enquiry proceeding etc. Failure to take these factors into account before passing order of dismissal, which is a major punishment, will be fatal to order of punishment. Without a valid, un-vitiated and proper enquiry the punishment of dismissal of any delinquent workman for absence of duty for mere absence of 1 (One) month and 15 (Fifteen) days is not only illegal, unjustified and quite disproportionate to the guilty of delinquent workman which requires interference.

**14.** The learned advocate of M/s. Eastern Coalfields Limited has relied on **J. Chelameswar & Abhay Manohar Sapre, JJ. Prem Nath Bali v/s Registrar, High Court of Delhi, 2016 (1) CHN (SC) 187**. In this case the Hon'ble Apex Court has held that :

*“It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the rules.”*

**15.** I am in respectful agreement with the view propounded by the Hon'ble Apex Court. But the facts of this present reference are quite different. The enquiry proceeding in this present reference is vitiated and conducted in utter violation of principle of natural justice, without affording opportunity to lead defence evidence to the delinquent workman. Even charged framed against the workman is quite defective which is very basis of domestic enquiry.

**16.** The delinquent workman Sri Chhotelal Bouri has stated in Para - 6 of his affidavit that he is sitting without any job from the date of his dismissal. This fact has not been rebutted in written statement filed by Nimcha Colliery of M/s. Eastern Coalfields Limited neither Nimcha Colliery of M/s. Eastern Coalfields Limited filed affidavit to rebut this evidence. However, the workman in his cross-examination stated to maintain his livelihood for his family at present he is working with mason. But he has not stated that he is employed any where during the period of dismissal.

**17.** The Hon'ble Apex Court in **Rajinder Kumar Kindra v/s Delhi Administration, AIR 1984 SC 1805** has held that :

*“Mere engagement of workman in some place does not mean that he is gainfully employed. If appointment is not gainful it is no employment in the eye of law. Thus casual working as a labour to save the family from starvation can not mean gainful employment and employer can not avoid the liability to pay back wages during the period of dismissal.”*

Service excerpt has not been filed by any parties to the reference. The delinquent workman Sri Chhotelal Bouri has stated his age 36 (Thirty Six) year in year 2012. At present his approx age would be 40 (Forty) year. Keeping in view his length of service and his age and unemployment during period of dismissal there is no possibility of getting alternate employment anywhere else.

**18.** The Hon'ble Apex Court in **Pawan Kumar Agarwala v/s General Manager-II & Appointing Authority State Bank of India & Others, 2016 (148) FLR 865** has relied on **Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324 :**

*“The case in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and / or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of full back wages.”*

**19.** It is settled law that “consequential benefit” does not mean only back wages. Consequential benefits includes apart from back wages other service benefits such as promotion, fixation of seniority, increments and grant of other financial benefits admissible to the post, had he been in service.

**20.** In view of discussion above the action of management of Nimcha Colliery of M/s. Eastern Coalfields Limited in dismissing Sri Chhotelal Bouri from service vide order dated 5<sup>th</sup>/12<sup>th</sup> July, 1999 is illegal and unjustified. The Dismissal Order of Sri Chhotelal Bouri dated 5<sup>th</sup> / 12<sup>th</sup> July, 1999 is here by set-a-side. The management of Nimcha Colliery of M/s. Eastern Coalfields Limited is directed to reinstate Sri Chhotelal Bouri with full back wages from the date of dismissal i.e. from 5<sup>th</sup>/12<sup>th</sup> July, 1999 till his reinstatement. It is further directed that Sri Chhotelal Bouri will be entitled to get consequential service benefits from the date of dismissal e.g. Promotions, Fixation of Seniority, Increments etc. Sri Chhotelal Bouri will be imposed punishment of stoppage of 4 (Four) annual increments without cumulative effect.

### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 161.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 169/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/135/93-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 161.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 169/93) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Natioanl Colliery of Workers Federation of M/s. SECL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22012/135/93-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/169/93

Vice President,  
National Colliery Workers Federation (NLO),  
Chirimiri Area,  
PO Korea Colliery,  
Distt. Surguja (MP)

...Workman/Union

### Versus

General Manager,  
Chirimiri Area of SECL,  
PO West Chirimiri Colliery,  
Distt. Surguja (MP)

...Management

## AWARD

Passed on this 6<sup>th</sup> day of October 2016

1. As per letter dated 26-8-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/135/93-IR(C-II). The dispute under reference relates to:

“Whether the action of the General Manager, Chirimiri Area of SECL in not providing employment after February 1984 to the 65 persons whose names are mentioned in the schedule annexed herewith is legal and justified? If not, to what relief these workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. 1st party Union through its Vice President submitted statement of claim at Page 2/1 to 2/4. Case of 1st party workmen is, it is registered under Trade Union Act 1926 having membership among employees of SECL. 65 workmen names appearing in the list with order of reference were its members. They were employed after their names were sent through Employment Exchange for selection. All the claimants were given appropriate training. All of them were employed as unskilled employees. Claimants worked with the management of 2<sup>nd</sup> party from 1982 to 984. Their employment was dispensed with by the management. It is further contented that prior to their engagement, appointment, selection committee was constituted and they were appointed after interview, vocational training was given to all the claimants.

3. 1st party submits suddenly services of all 65 claimants were stopped/ terminated by management without assigning any reason for termination/ stoppage from work. That claimants were not issued notice terminating their services, retrenchment compensation was not paid to them, permission of Government was not obtained as per Section 25 N of ID Act. Work for which the claimants were engaged is still existing. Only to get rid of the all 65 claimants for regularization, management arbitrarily terminated their services. It is alleged that action of the management amounts to unfair labour practice. The Union submits that chart of the details of the claimants is shown in Annexure A. All the claimants were performing work of regular nature, said work is still existing. Before engaging fresh/ new hands by management, claimant should have been given preference under Section 25 G of ID Act. The claimants were not given preference by the employer and act of management is arbitrary. On such ground, 1st party Union claims reinstatement with full backwages of all the claimants.

4. 2<sup>nd</sup> party management filed Written Statement at Page 5/1 to 5/4 opposing claim of 1st party Union. 2<sup>nd</sup> party submits that reference is highly belated. Such reference could not have been made by the Central Government. Management suffered prejudice in defending the case as the records of 1984 and earlier to it are not readily available. That it will not be possible to effectively defend the case. 2<sup>nd</sup> party further submits there is no right for employment in colliery for anyone. There is no rule or law for providing regular employment. Considering exigency, the persons are given temporary employment. Temporary or casual employment does not give right for regularization. Some persons were given employment purely on temporary basis. They have no right to regular employment. The claimants were not regularly appointed, some of them have worked for few days. Management is trying to trace out old records if available. Sample copy of the appointment order issued to Koimuddin is produced. The appointment was given till 29-2-84. The services automatically came to end on 29-2-84. There was no necessity for giving employment to the claimants after 29-2-84. The employment was purely contractual in nature. It does not give any right for regularization. Claim for regularization is without any justification.

5. 2<sup>nd</sup> party further submits that initially employment was given by WCL, subsequently SECL was formed in 986. After formation of SECL, Korea colliery came under SECL. The claimants were not in employment of SECL,. There was no liability on SECL to give employment to the claimants in SECL or other companies. Employer employee relationship not existed between SECL and the claimants. Vacant post is not available in Korea colliery. There is surplus manpower not only in Korea colliery but also in SECL. There is no scope of giving employment to any person. Employment position during the period 1984 and 1993-94 is totally different. Union did not raise dispute at relevant time assuming that claimants had no right, they waived their right and therefore could not claim any relief. That management of SECL, Korea colliery is not in a position to give employment to workmen and there is no necessity of additional work force in Korea colliery.

6. 2<sup>nd</sup> party further submits that employment in coal industry can be given following the conditions, persons sponsored by Employment Exchange, selection and interview by the committee, availability of vacancy, production of domicile certificate. The claimants were not in employment since 1984. They have not been sponsored through Employment Exchange, claimants could not be considered. It is further submitted that person worked for 30 days has no right for regularization, on such ground, 2<sup>nd</sup> party prays claim of 1st party Union deserves to be rejected.

7. 1st party Union filed rejoinder at Page 7/1 to 7/3 reiterating its contentions in statement of claim. That the management of 2<sup>nd</sup> party had appointed 75 persons on 1-1-1987, 150 persons were appointed on 18-8-88, 100 persons were appointed on 23-3-89 in Chirimiri Area. Despite the work was available with the management and employment

was given to new set of persons, the services of claimants were terminated. That management of 2<sup>nd</sup> party is covered as state under constitution of India. 2<sup>nd</sup> party adopted unfair labour practice. Preference under Section 25 G of ID Act was not given to the claimants when fresh recruitment was started. That claimants were given employment after their names were sponsored through Employment Exchange Mahendragarh. The posts were notified by management through Employment Exchange. All of them were interviewed and selected and provided employment. That claimants worked about 3 years. They were performing work of General Mazdoor in the colliery. Lastly they were asked to work as loaders by giving orders. Chirimiri area where claimants were employed, new workers/ fresh recruits are employed by the management. If no work is available in the colliery, all those workers would be transferred to other colliery where work is available. Dy. Chief Engineer Mining, Korea colliery had written letter dated 9-9-84 to Dy. Chief Personal Manager, Chirimiri area, claimants be engaged in other sister colliery of the area. The matter was under consideration. The management discontinued services of the claimants. Termination of services of claimants is unjustified. Management engaged 47 workers through contractors, the contract labours are performing the same nature of job on which the claimants were engaged.

8. 2<sup>nd</sup> party filed rejoinder reiterating its contentions in Written Statement. It is denied that all 65 claimants are members of the Union. That claimants are not workman. The Union never raised claim of individuals during 1984-85. That CITU Union had raised claim claiming the claimants were its members. 1st party Union has no right to sponsor the case of claimants. Management is not in a position to reconstruct entire file. In absence of specific particulars, management is unable to give reply. Management suffered prejudice in defending the matter as the dispute is raised after long delay. The persons were given employment for few days on specific terms and conditions. Their employment automatically ended without further right to continue in service. 2<sup>nd</sup> party denies that services of claimants were stopped/ terminated by the management. 2<sup>nd</sup> party denies that work carried by claimants were given to the contractors, unfair labour practice has been denied. 2<sup>nd</sup> party denies that claimants were performing regular nature of work and such work is still in existence. The preference claimed for 65 claimants as per Section 25 G of ID Act have been denied. That no one can be given employment unless his name is sponsored through Employment Exchange. Some individuals were given employment for few days on contractual basis. Their services automatically ended, no question of their reinstatement arise.

9. No dispute award was passed on 24-11-99 by my predecessor. Ex parte award was set aside as per order dated 7-11-00.

10. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the General Manager, Chirimiri Area of SECL in not providing employment after February 1984 to the 65 persons whose names are mentioned in the schedule annexed herewith is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

11. The term of reference pertains to not providing employment after February 1984 to the 65 claimants mentioned in the schedule. The term of reference not directly pertain to the legality of termination of services of the claimants.

12. Affidavit of evidence are filed by claimant Heeralal Samaru, Ameer Singh Shivghan, Sevakram Gendaram, Akaluram Sukhlal, Pransingh Jagsai, Ramcharan Sitaram, Lalsai Sevakram, Jawahar Ramprasad, Samelal Amarsai, Sambal Singh Gokul Singh, Ghasiram Shivraj, Rama Gangaram, Patremsingh Jailal Singh, Tilakdhari Sahjad. All of them have been cross examined. Affidavit of witness Anantlal Jagdish Sahu, Mansuram Makhluram filed. In support of claim, all of them have been cross-examined. Affidavit are also filed by Shri Ghansai Bagholi, Gulabram Rameshwar, Mansai Jagmohan, Shyamal Amarsai, Sonsai Pardesiram, Ram Prasad Subraj, Birsai Hariprasad, Mansai Heerasai, Shivnarayan Dhanukdhari, Ramsharan Bolo, Shyamal Hublal, Mansur Alam Rahman Mian, Dhansai Duhan, Ramchandra Natiya, Bishu Gura, Ghansham Damru, Abhiram Arjun, Raghu Krishna, Siyaram Khabluram, Sikar Krishna, vinaypal Dhananjay Pal. All of them remained absent for their cross examination, their evidence cannot be considered.

13. Management filed affidavit of witness Shri Jaffar Mohammad, Amrendra Mohan Sen, Bachan Singh, Tulsiram, Bhola Prasad. All of them have been cross examined.

14. In affidavit of witnesses of 1st party, they have stated that they had received letter of interview from Employment Exchange Mahendragarh for appearing for interview at Korea Rest House. They had appeared for interview in Korea colliery Rest House in December 1981. They were interviewed. In January 1982, select list of 75 persons were displayed, their names were included in the list. They were provided VTC training. After training, they were engaged in Korea colliery. They were working as labour, cleaning work in mine and different kinds of work. Out of 75 persons working, 10 persons were transferred to Regional Store and are still working. That they worked with 2<sup>nd</sup> party from January 1982 to February 1984 continuously. Again in January February 1982, they were engaged for work of labour. They were told that they were stopped from work for 5-6 days. Thereafter they would be engaged for the work. However they were not engaged by the management. Thereafter they are unemployed. Shri Sevak Ram produced Exhibit W-1, W-2 letter about VTC Training and appointment letter dated 29-1-84. Similar documents are produced by witness Ghansham at Exhibit W-3,4, by witness Pransingh Exhibit W-5, by witness Ramcharan at Exhibit W-6, witness Lalsai Exhibit W-7, witness Jawahar Ramprasad Exhibit W-8,9, Samaylal W-10, witness Shamlal- W-11,12, Exhibit W-1 to 12 are admitted by management. Similar documents are produced by other witnesses. No valid evidence is adduced to prove such documents in evidence of other claimants.

15. Shri Heeralal in his cross examination says he was appointed in Korea colliery, he was unable to tell under which company was managing Korea colliery. He does not understand WCL after SECL was formed for MP, CG. He received appointment letter by post, he worked for 2-3 years. He did not remember month or year of his working or the period of his working he denied that appointment letter was given to him for two months. Above claimants reiterates that he was appointed on permanent basis. He was unable to tell about the order of permanent appointment. He was receiving monthly pay, pay slip was also received by him. He was receiving coal for cooking meals. He did not know whether he received any card. He was not able to tell how much quantity of coal was received by him or he received facility of treatment in colliery hospital. He received medical card. He denies that he was appointed only for two months.

16. Ameer Singh in his cross examination says he was working in Korea colliery, he was not able to tell whether Korea colliery was of WCL or SECL. He was unable to tell when SECL was established. He received appointment letter in writing. He claims ignorance of the terms and conditions in appointment letter. He denies that he was given appointment only two months he denies that he worked only for two months rather he reiterates that he worked from 1-1-82 to March 84. Janardhan Tiwari was Manager at relevant time. He was receiving pay after 15 days along with pay slip. He was receiving coal for domestic use. The coal card was received by him, he received medical card for treatment in colliery hospital. He denies that he worked only for two months and his services ended automatically.

17. Sevakram in his cross examination also says he received appointment letter, he denies that he received appointment for two months, he reiterates that he worked from January 82 to March 84. Mr. Tiwari was Manager at relevant time. He was doing work of labour and miscellaneous work. Manager was not telling him work. He received wages every 15 days along with payslip. He did not receive coal for use. He had not received medical card.

18. Shi Akaluram in his cross examination says he received letter for interview by post, he was called at Korea colliery rest house. He was interviewed in December 1981. The select list was displayed in the office boards. From this, he came to know that 75 persons were selected, he received written appointment letter, it is not produced in the case. Appointment letter was not showing the period of his appointment. He denied that he was appointed for 3 months. He reiterates working from January 82 to February 84. Order of termination was not received by him. He was told for 2-4 days, he was disengaged. He would be called for work thereafter. Pransingh in his cross examination has also deposed that he received appointment letter, he was given VTC Training. In his cross, he says he could not read what is written in his affidavit of evidence, he was unable to tell when he signed on the affidavit. He not received appointment letter, he was interviewed, he had produced documents. In his further cross examination, witness says he had received appointment letter, he denies that he was appointed only for 3 months. He received wages for his working days, certificate about his working was not issued by the management. He was unable to tell names of 75 persons who were appointed, some persons were from Allahabad, Orissa, Chhattisgarh and MP. Those persons were residing in their villages. That he has not written in his affidavit about transfer of 10 persons. Work was started in 1982, he could not tell. He has not written the month of 1982. The work was started and month of 1984 he was stopped. He received payslip. It was deposited with the management. Any payslip is not with him. He not received pay slip for last three months working he denies that he was appointed only for 3 months and thereafter his service ended.

19. Ramcharan in his cross examination says he is of 50 years, he did not remember his age when he was engaged for work in 1982, he received education upto 3<sup>rd</sup> standard, he could write his name, he put his thumb mark on affidavit of evidence drafted by his Advocate. He did not understand the interview. He received appointment letter, it is produced on record. He denies that he was appointed only for three months. He reiterates that he worked till March 1984, he had not received order for his termination. In his further cross, witness says he was stopped from work for 4-5 days assuring to re-engage. After 1984, he is working for wages, he does not know about the other claimants.

20. Lalsai in his cross examination says he is of 45-46 years age and is illiterate. He doesnot know the contents of his affidavit. However Exhibit W-7 is certificate of VTC training given to Lalsai. Copy of appointment order is also produced but no valid evidence is adduced.

21. Jawahar in his cross examination says he signed on his affidavit, he was unable to tell about the contents of his affidavit, his name was sponsored through Employment Exchange, after interview, he was appointed. Appointment letter was received by him is produced in the case. He denies that he was engaged only for 3 months. WCL had terminated him. He claims ignorance about SECL. He was member of Congress Union. Out of 75 persons appointed, he knows only 10-15 persons who used to meet him. He was unable to tell where those persons were residing. In his affidavit, he stated about 65 persons. He doesnot know the meaning of transfer written in para-6 of affidavit. He did not remember the exact period of his working, he received wages for his working days, he received payslips, pay slips were deposited with clerk of the management. He did not remember whether he was engaged on piece rated or time rated basis. After his dis-engagement, he works for wages. Documents Exhibit W-8 about VTC training is produced.

22. Evidence in cross examination of witness Samelal, Sambhal Singh is similar. Kashiram in his cross says he had given affidavit of his evidence in Hindi putting his thump mark. Tilakdhari in his cross-examination says his age is 49 years, he received education upto 5<sup>th</sup> standard. He not received appointment letter in writing. He denies that he was engaged as casual labour for 3 months. He personally knows 8-9 claimants. Out of 75 workers, 10 are still working. He knows only names of 2-3 persons only Prabhu Narayan, Vedram, Prasannadas- they are working in Korea colliery. He claims ignorance whether appointment letter is issued to them. In his cross-examination, witness reiterates that he was working from 1982 to 1984.

23. Claimant Rama in his cross examination says he filed affidavit of his evidence. Affidavit was not prepared at Jabalpur. He is of 50 years of age, appointment letter was not given to him. He denies that he was engaged for 3 months as casual labours. 65 persons referred in his affidavit of evidence- anyone is not working at present. Department had not issued certificate of working. He denies that contents of his affidavit that he was working from January 82 to Feb 84 is incorrect.

24. Partem Singh in his cross examination says that he was appointed by WCL, his name was sponsored through Employment Exchange, he was called for interview, he had not received appointment letter in writing. After select list was displayed in office, appointment letter was received by him. Appointment letter is produced. He denies that he was engaged for 3 months. He reiterates that he worked for 2 years and 2 months after he was stopped from work. Thereafter he was not called for work, he become member of the Union after 2-3 months of his disengagement. Out of 65 claimants, he knows 15-20 claimants by face. He doesnot know where those other 64 claimants resides. After his disengagement, he is not in employment. His son are doing work of cultivating land, he was unable to tell its income. He was receiving pay along with pay slip. Payslips were kept by clerk. That he has produced certificate about work of 2 years 2 months. He was unable to tell name of the clerk taking back pay slip from him. Other 64 claimants were receiving pay in his presence, their payslips were also taken back by the clerk. He denies that appointment letter is not produced by him.

25. Other set of witnesses Anantram and Mansuram filed affidavit of their evidence supporting claimants that they were working in the colliery during the period 1982 to March 84. Thereafter claimants were disengaged. Anantram in his cross says he retired in 2005, he claims ignorance about provisions of Mines Rules and Mines Act. The duty of MTK is to mark attendance. MTK work in 3 shifts, their duty used to change. During 976 to 88, he was working as MTK in colliery. List of employees engaged used to be received by him, accordingly he was marking the presence as per the names in the list. Presently he was not knowing the person. He was unable to tell during 1976 to 1988, attendance of how many persons was marked by him. He was unable to tell what work was done by 10 persons after they had left the work. He claims ignorance about the selection process ad appointments.

26. Mansuram in his cross says he is working as Suptd. in office of Korea colliery, he is not office bearer of Union, he has taken leave for giving evidence. He was working in 3 shifts during 1981 to 1992 as MTK. Work of MTK is to maintain attendance. It was duty of MTK to maintain appointment letters received by him, he doesnot personally know 75 persons. He was unable to tell attendance of how many persons was maintained by him.

27. So far as evidence of Anantlal and Mansuram about marking attendance of claimants is not supported by any documents. Their evidence is not cogent about he had marked attendance of any of the claimants. As evidence is recorded after long lapse of time, their evidence is not worth reliance about marking attendance of 65 claimants during February 82 to March 84.

28. Turning to evidence of management's witnesses, Jaffar Mohd filed affidavit of evidence. Said witness is Dy. Personal Manager. In his affidavit of evidence, it is stated that 50 vacancies for piece rated category were notified to Employment Exchange Mahendragarh vide letter dated 21-8-81 for Korea colliery. In pursuance of said notification, list of 257 candidates was sponsored. The committee was constituted consisting Chairman and six members including Suptd. of mines, Account Officer, Adm. Mahendragarh, Employment Officer and representative of SC ST, 75

candidates were selected including 50 general candidates, 5 SC, 10 ST candidates, Wait list to meet future requirement was prepared for vacancies arising as per exigency of work. 75 candidates were informed to the Employment Exchange Officer vide letter dated 24-4-82. Any question of deletion of all their names from Employment Exchange does not arise. Subsequently when vacancies arose at Regional Store Korea, 10 candidates from Waiting list, appointment letters were issued. Those 10 candidates included Sl.no.1 to 7, 1 candidate from St, candidates from Wait List were engaged for one month as casual workman, temporary appointment letters were issued mentioning the duration of engagement. The mode of termination was mentioned clearly in the letters of appointment. Their engagement was purely temporary. As per attendance put up by candidates engaged, bonus was paid as per working days, details shown in Para 11 that in 1986, there was requirement for Chirimiri Colliery. The vacancies were notified to Employment Exchange, list of 1031 General Candidates, 221 SC, 351 ST candidates were received from Employment Exchange. 20 persons included in the Waiting List were also included in the candidates sponsored through Employment Exchange, their details are given in para 12 of the affidavit. Out of 20, 4 candidates appeared for interview. Other 15 candidates remained absent for interview. The claimants were not appointed permanently, they were not deprived from getting employment elsewhere. From his evidence Exhibit M-1 is admitted in evidence. Jaffar Mohd in his cross examination says he has not brought letter given to Employment Exchange in 1986. He had not participated in selection process of 1981. His affidavit is filed on the basis of official record. He claims ignorance whether documents referred by him for filing his affidavit are produced on record. That select list remains valid till next select list is prepared. He admits till interview of next selection is conducted, the candidates in earlier select list are given appointments. In 1984 he was not residing in Korea colliery, he was not knowing officer signing appointment orders issued at that time. He admits during 81 to 84, management was making arrangement for VTC Training. Such training is still given by the management. Employee who is given VTC training is eligible for working in the mines. The documents referred to witness admitted by him are marked Exhibit W-1 to W-12. In his affidavit of evidence, name of Samaudeen is not stated. Management maintained Form B of its employees. He admits Form B maintained for the period 1981 to 1984. It can be seen whether the employees had worked or not. He not brought letter dated 24-4-82. He admits that 75 employees were employed by the management to VTC Training was given.

29. From evidence of management's witness, it is clear that 75 candidates in Wait List were given VTC Training. The select list was valid till interview for next selection process was undertaken.

30. As per evidence of management's witness Shri Amrendra Mohan Sen, he was Personal Officer in West Chirimiri Colliery during 1987 to 1998. That 50 vacancies were notified to Employment Exchange Mahendragarh vide letter dated 24-8-88 for Korea colliery, 257 candidates were sponsored by Employment Exchange. Selection Committee was constituted- 75 candidates were selected by the Committee. His evidence is identical to the evidence of management's witness Jaffar Mohd. That 10 vacancies arise in Regional Store Korea were filed from the candidates from Waiting List including 7 General candidates and one ST candidate. Appointment letters were issued to the employees for specific period 29-1-84 to 28-2-84. The bonus was paid to the employees as per their working days, details are given in Para -11 of his affidavit. In 1986, management notified vacancies to the Employment Exchange, 20 candidates from Waiting List were also sponsored by Employment Exchange included Tilakdhari, Tulsiram, Ramcharan and Banku. Out of 20 candidates sponsored through Employment Exchange in 1986, 156 candidates remained absent for interview. In his cross, management's witness says that Form B register of employees working in mine used to be maintained. Form B of employees/ claimants is not produced in the matter. He was not working in Chirimiri mines during 1982 to 1984. Witness explained he was working in the mine during 1980 to 983 on non-executive post. He was not concerned with selection or appointments of the claimants.

31. Bechan Singh management's witness filed affidavit of his evidence. His affidavit is devoted that appointment letters were issued to all claimants by management for specific period 29-1-84 to 29-2-84. Their engagement ended automatically on 29-2-84. Form B is statutory record of mine. Attendance of employees working underground is marked in Form C. Attendance of persons employed underground is marked in Form B. That the Attendance Registers are preserved for 3 years. It is not possible for management to preserve the documents for indefinite period. In his cross, he says he is working in Korea colliery from 1-11-11. Said mine is known as Doman Hill Mines. The claimants did not work under him.

32. Management's witness Tulsiram filed affidavit of his evidence. His affidavit is devoted that his name was sponsored through Employment Exchange for appointment in PR Category in Korea colliery in Chirimiri Colliery. The claimants were included in the Waiting List. They were given appointment letter for the period 29-1-84 to 28-2-84. In 1986, selection process was started. His name was sponsored through Employment Exchange Mahendragarh. He was selected and given appointment on 30-1-87. In his cross, he says his name was included in the list of claimants. He was first appointed in 1982, he was working during 1982 to 84. In January 84, he was working, thereafter he was disengaged. He was re-engaged in 1987, at that time, 75 persons were engaged by the management. In his re-examination, he says in 1982, he was engaged for one month.

Considering evidence of management's witnesses, appointment letters issued to claimants are not disputed. The conditions in appointment letters produced at Exhibit W-2,4,5,6,9,10,12 are identical. Conditions in those appointment

letters and similar appointment letters submitted along with affidavit of other claimants are- they were directed to produce (1) original registration card of the Employment Exchange, (2) Domicile certificate -SC/ST certificate if applicable from Competent Authority, (3) 3 copies of pass port size photographs, (4) certificate of age such as School Certificate or any other documentary proof of age but in absence of documentary evidence, the colliery Medical Officer will determine the age, (5) in case of dependent of retired employees the candidate will submit an affidavit, (6) VTC Certificate after undergoing the training. Certificate of VTC training produced at Exhibit W-1,3,7,8 are admitted by management. Those documents shows that VTC Training was given to the concerned claimants during 18-3-82 to 24-3-82. The certificate of VTC training are also submitted along with affidavit of other claimants. All those documents shows that after selection of claimants, VTC Training was given.

33. The defence of 2<sup>nd</sup> party is that claimants were engaged for specific period 29-1-82 to 28-2-84 and after completion of said period, services of 1<sup>st</sup> party claimants ended automatically. No doubt, the appointment letters produced on record shows the claimants were engaged for specific period 29-1-82 to 29-2-84 and appointment letters provides that the claimants were to be paid wages as per NCWA III. Their services would be covered by standing orders applicable to the unit. The appointment letter was issued in 1984. As per evidence of management's witness, MW-1, MW-2, the vacancies were notified to Employment Exchange Mahendragarh vide letter dated 28-8-81 which clearly shows that claimants were selected for vacant post. Letter dated 28-8-81 is not produced by management whether vacancies for piece rated or casual employees were notified is not established. The conditions in appointment letter are considered. The claimants were directed to produce their Registration Card, age of proof. School leaving Certificate. Engagement of 1<sup>st</sup> party cannot be said as casual labour rather their engagement was in pursuance of the selection after notifying vacancies to the Employment Exchange.

34. The term of reference is not pertaining to the legality of termination of claimants rather the term of reference pertains to legality of not providing employment to the claimants after February 1984. Evidence of management's witness Jaffar Mohd in cross examination is clear that the select list remains valid till the next select list is prepared. He admits that till interview for next selection, list are conducted, the candidates in earlier selection list are given appointment. Fresh selection process was started in 1986, management has not explained why the claimants in earlier select list were not given appointments. As per evidence of management's witness, Tulsiram in 1987 around 75 persons were engaged by the management. Management has not given reason why those 65 claimants were not appointed at that time.

35. Learned counsel for 2<sup>nd</sup> party Shri A.K.Shashi during course of argument emphasized that claimants were engaged for specific period. On completion of their period in February 1984, the services of claimants automatically terminated. Appointment was only for a period of 3 months. Claimants have not established that they were continuously working from 1982 to 84. The burden is not discharged. Violation of Section 25-G is not established and also addressed on the material facts as per record, pointing out evidence of respective witnesses. That engagement of 1<sup>st</sup> party claimants is covered under Section 2(oo)(bb) of ID Act. Violation of Section 25-H is not established placing reliance on ratio held in various cases.

36. Learned counsel for 1<sup>st</sup> party Advocate R.Nair supported claim of claimants and also placed reliance on ratio held on various cases.

37. So far as on the point of burden of proof completing 240 days continuous service, the evidence of 1<sup>st</sup> party workmen is not fully corroborated by documents- appointment letters only for the period 29-1-84 to 28-2-84. Evidence of the claimant continuously working during the period 82 to 84 is not supported by documents pay slip are not produced. It is difficult to believe that pay slips are taken back by the management pertaining to their work during 1982 to 1984. The claimant have not produced evidence about complaints made to any authority in that regard.

Ratio held in case of Director, Fisheries Terminal Division versus Bhikubhai Meghajibhai Chavda reported in AIR 2010-SC-1236. Ratio held in case Ujjain Development Authority versus Kailash Ghavri reported in ILR(2012)MP-378 cannot be applied to case at hand. Reliance is also placed by counsel for 1<sup>st</sup> party Miss R.Nair in case between Secretary, Haryana State Electricity Board versus Suresh and others reported in 1999(3)SCC-601. Ratio held in the case pertains to paper arrangement amount to camouflage smoke and a screen which could be easily pierced and the real contractual relationship could be clearly visualized complying the principle of lifting of the veil.

In present case, pleadings of parties are silent about management had engaged any contractor. There are absolutely no pleadings that claimants were engaged through contractor and their principal employer was the management. Rather the pleading and evidence on record is clear that as per appointment letters, claimants were directly engaged by management after select list was prepared following the procedure of notifying the vacancy to Employment Exchange and all claimants were selected by the Committee. Therefore ratio held in above case also cannot be applied. Engagement as per appointment letter was for specified period 29-1-84 to 28-2-84. However the establishment of 2<sup>nd</sup> party was not closed. Therefore non-engagement of all claimant is not covered under Section 2(oo)(bb) of ID Act.

In case of MP Urja Vikas Nigam Ltd versus Santosh Kumar Dubey and others reported in MPH Order dated 21-1-09 reported it was observed that employment was not temporary duration, it is not established that project had come to an end. When Ist party workman were engaged after following recruitment process their names were sponsored through Employment Exchange. Letter 28-8-81 about notifying vacancy is not produced.

The evidence clearly shows that engagement of claimants was in pursuance of selection for regular vacancies. However they were given appointment only for specific period 29-1-84 to 28-2-84 overlooking that select list of claimants was valid till next selection process was initiated. Considering facts are different, termination of Ist party claimants cannot be covered under Section 2(oo)(bb) of ID Act.

Shri A.K.Shashi relies on ratio held in case of K.Rajan versus Kerala Electricity Board reported in 1992-LIC-1208. Their Lordship dealing with Section 2(oo)(bb) of Section 25 H of ID Act held retrenchment doesnot include termination of service of workman as a result of non-renewal of contract of employment, termination of service of employee under contract, employee cannot as a right claim benefit under Section 25-H.

Reliance is also placed in case between Bhavnagar Municipal Corporation versus Salimbhai Umarbhai Mansuri reported in 2013-iii-LLJ-545(SC). Their Lordship dealing with Section 2(oo)(bb) and Section 25-F,G,H of ID Act held facts clearly indicate that respondent worked only for 54 days in two fixed periods. On expiry of second term, respondent's service stood automatically terminated on basis of contract of appointment. Respondent had not worked continuously for 240 days in a year to claim benefit of Section 25-F,G,H of ID Act. Contract of appointment indicates that employment is short lived and same is liable to termination on fixed period mentioned in contract of appointment. Facts clearly indicate that there was no retrenchment under Section 2(oo) read with Section 2(bb) , consequently Section 25 H would not apply.

Ratio held in Surendra Nagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F ,B,2(oo) of ID Act held facts must be proved to claim relief from court. For claiming protection of Section 25-F, (1) their exists relationship of employer and employee, (ii) he is a workman under Section 2(s), (iii) establishment in which he is employed is an industry within meaning of the act and (iv) he has put in not less than one year of continuous service as defined in Section 25 B under the employer.

In present case, the evidence about continuous working of Ist party claimants from 82 to 84 is not worth reliance. Evidence on above point is not corroborated by any documents. However the evidence on record shows that they were engaged for specific period mentioned in the appointment orders after following selection process. The claimants were not appointed after their selection before the fresh selection process was initiated in 1986. The ratio held in all those cases cannot be applied to case at hand.

In case between State of Rajasthan versus Sarjeet Singh and another reported in 2007-I-LLJ-236. Their Lordship dealing with Section 25 G,H, 2(oo)(bb) in Para 14 held it is now well settled that although the Labour Court possesses discretionary jurisdiction in moulding the relief in terms of Section 1-A of the IDAct, the power thereunder must be judicially exercised. Respondent No.1 herein was appointed under a scheme. He was appointed for a specific purpose. The fact that his initial appointment was for a period of six months is not disputed. The concept of there being dual employer although may not be unknown in industrial jurisprudence but the Labour Court in our opinion misdirected itself in holding that the termination of his services by Appellant was illegal being in violation of Section 25-G and H of ID Act.

In present case, the term of reference did not directly pertain to legality of termination of services of workman. As per pleadings between parties, dispute is Ist party claimants were selected following the appropriate selection process, however they were appointed for specific period, they were not given preferential appointment after fresh selection process was started in 1986. Ratio held in all those cases cannot be applied to case at hand as the facts of present case are different.

38. As the Ist party claimants were selected after their names were called through Employment Exchange, they were stopped from work after February 84. There is no dispute between parties that all claimants were selected following selection process. The management after stopping the claimants from work engaged other persons selected in 1986. 2<sup>nd</sup> party has not produced any evidence that claimants were selected for casual work, piece rated work. The terms and conditions in appointment letters discussed earlier, documents about Registration card in Employment Exchange calling documents School Leaving Certificate indicates that their appointment was for permanent post after their selection. Therefore denial of work to the Ist party claimants is illegal. Accordingly I record my finding in Point No.1.

39. Point No.2- In view of my finding in Point No. 1 denial of work to the claimants after February 1984 is illegal, question remains for consideration is as to what relief claimants are entitled? Out of 65 claimants,12 claimants namely Ram Brij, Patrem Singh, Tilak Ram, Shyam Lal, Ram Prasade, Lal Say, Gulab, Muktar, Shivnarayan, Jawahar, Dhan Say, Md.Mukhtar have died. Other claimants have not appeared for their cross examination and participated in reference proceeding. The claimants namely Heeralal Samaru, Ameer Singh Shivghan, Sevakram Gendaram, Akaluram Sukhlal, Pransingh Jagsai, Ramcharan Sitaram, Lalsai Sevakram, Jawahar Ramprasad, Samelal Amarsai,

Sambal Singh Gokul Singh, Ghasiram Shivraj, Rama Gangaram, Patremsingh Jailal Singh, Tilakdhari Sahjad, Ananttal Jagdish Sahu, Mansuram Makhluram filed affidavit of their evidence and also made available for cross examination, their particulars of identity are clearly given in the affidavit. Therefore their claim deserves to be accepted. So far as evidence of those claimants that they are not employed after their disengagement cannot be accepted as Gospel truth. Without any source of income or earning, how they are surviving is difficult to believe.

40. On the point of reinstatement with backwages, learned counsel for Ist party Miss R.Nair relies on ratio held in case between

Hajinder Singh versus Punjab State Warehousing Corporation reported in AIR-2010-SC-192. With respect to absorption Miss R. Nair relied on case between Durgapur Casual Workers Union versus FCI reported in 2015(5)SCC-786. Their Lordship held powers of Industrial Court and Labour Court to pass appropriate order. Services of workmen who were employed by respondent corporation as casual employees on daily wage basis not regularized. Tribunal specifically finding unfair labour practice held it was not open to High Court to interfere with award of Tribunal directing absorption of appellant workmen.

Reliance is also placed on ratio held in case between Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship dealing with reinstatement with backwages held wrongful/ illegal termination of service. the conduct of employer and sufferings of employee consideration of Principles reiterated reinstatement entitles such employee to claim full backwages, denial of backwages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay backwages. Where employer wants to deny backwages or contest the employee's entitlement to get consequential benefits, employer has to plead and prove that employee was gainfully employed during the intervening period.

In present case, there is no evidence adduced by management about gainful employment by claimant. However their evidence about their totally unemployed after their disengagement also is not worth to be believed. Therefore ratio held in the case cannot be applied.

In case between Oil and Natural Gas Corporation Limited versus Petroleum Coal Labour Union and others reported in 2015(6)SCC-494. Their Lordship held clause 2(ii) ONGC certified standing orders if conferring right of regularization if conditions stated therein were satisfied. Workmen concerned in facts of the case held entitled to regularization. In present case, the certified standing order are not produced by 2<sup>nd</sup> party management. However the evidence on record shows claimants were appointed following selection process after they were sponsored through Employment Exchange. They were not given appointment before fresh selection process was started in 1986. Considering above aspects, the relief of absorption in service of claimants Heeralal Samaru, Ameer Singh Shivghan, Sevakram Gendaram, Akaluram Sukhlal, Pransingh Jagsai, Ramcharan Sitaram, Lalsai Sevakram, Jawahar Ramprasad, Samelal Amarsai, Sambal Singh Gokul Singh, Ghasiram Shivraj, Rama Gangaram, Patremsingh Jailal Singh, Tilakdhari Sahjad, Ananttal Jagdish Sahu, Mansuram Makhluram deserves to be allowed.

41. Learned counsel for 2<sup>nd</sup> party Shri A.K.Shashi has argued that the dispute is raised belatedly reference is not tenable. In support of his argument, Shri A.K.Shashi relies on ratio held in case between

Nedungadi Bank Ltd. Versus K.P.Madhavankutty and others reported in 2000-I-LLJ-561. Their Lordship dealing with Section 10 of ID Act held power to make reference, to achieve above purpose cannot be exercised at any time say after delay of 7 years and there being no industrial dispute existing or apprehended.

The evidence on record shows that dispute was raised in 1990. Conciliation proceeding continued for almost 3 years. 2<sup>nd</sup> selection process was started by 2<sup>nd</sup> party in the year 1986. Claim of Ist party cannot be said highly belated, the argument advanced cannot be accepted.

On the point of regularization, Shri A.K.Shashi relies on ratio held in case of Director, Institute of Management versus Smt. Pushpa Srivastava reported in AIR 1992-SC-2070. Their Lordship dealing with adhoc appointment on contractual basis for six months continued for more than a year. It was held no ground for claiming that appointee is entitled to regularization in service. Ratio held in the above cannot be applied to case at hand. As claimants were appointed after following selection process and terms and conditions mentioned in the appointment letters. Relief for absorption of claimants Heeralal Samaru, Ameer Singh Shivghan, Sevakram Gendaram, Akaluram Sukhlal, Pransingh Jagsai, Ramcharan Sitaram, Lalsai Sevakram, Jawahar Ramprasad, Samelal Amarsai, Sambal Singh Gokul Singh, Ghasiram Shivraj, Rama Gangaram, Patremsingh Jailal Singh, Tilakdhari Sahjad, Ananttal Jagdish Sahu, Mansuram Makhluram deserves to be allowed. Considering evidence claimants were totally unemployed after their disengagement is not reliable. The Union was not punctual in prosecuting the reference proceeding, no dispute award was passed and same had been set-aside, the proceeding was delayed, 20 % backwages would be appropriate. Accordingly I record my finding in Point No.2.

42. In the result, award is passed as under:-

- (1) The action of the General Manager, Chirimiri Area of SECL in not providing employment after February 1984 to the 65 persons is not legal.
- (2) The management is directed to absort claimants namely Heeralal Samaru, Ameer Singh Shivghan, Sevakram Gendaram, Akaluram Sukhlal, Pransingh Jagsai, Ramcharan Sitaram, Lalsai Sevakram, Jawahar Ramprasad, Samelal Amarsai, Sambal Singh Gokul Singh, Ghasiram Shivraj, Rama Gangaram, Patremsingh Jailal Singh, Tilakdhari Sahjad, Anantlal Jagdish Sahu, Mansuram Makhluram with continuity in service with 20 % backwages.
- (3) After cross-examination, workmen Shri Lalsai Sevakram died on 26-9-4, Jawahar Ramprasad died on 5-12-2010 & Shri Patremsingh Jailal Singh died on 29-10-12. 20 % wages be paid to the LRs of these deceased workmen till their age of superannuation or death.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 162.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 130/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/598/99-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 162.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 130/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 11.01.2017.

[No. L-22012/598/99-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/130/2000

The Joint General Secretary,  
Rashtriya Koyla Mazdoor Sangh,  
Sohagpur Area,  
PO Dhanpuri,  
Distt. Shahdol (MP)

...Workman/Union

**Versus**  
General Manager,  
Sohagpur Area of SECL,  
PO.Dhanpuri, Distt. Shahdol (MP)

...Management

#### AWARD

Passed on this 30<sup>th</sup> day of November, 2016

1. As per letter dated 6-7-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/598/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the General Manager, Sohagpur Area of SECL, PO Dhanpuri, Distt. Shahdol in dismissing Shri Atique Mohd. Ansari, Spl. Grade Clerk from services w.e.f. 20/21.11.97 is legal and justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 5/1 to 5/14. Case of Ist party workman is that he was initially employed as apprentice clerk in 1971 at underground mines of Sohagpur Area, SECL. He was confirmed on said post. He was promoted as Sr. Clerk in 1985. He was performing various kinds of duties. During 1990 to 1995, he performed duties in sale section. He was transferred to Baikunthpur in 1991. In January 1992, he was transferred to Sohagpur Area at Dhanpuri underground as special Grade Clerk. That he worked with devotion and honestly to satisfaction of superiors. There was no adverse remarks against him. While he was working as Senior clerk, he performed multi ferious duties in various departments and places of Area Head quarter. It is submitted that while performing the duties as Clerk Special Grade I, the applicant was served with chargesheet dated 20-23/1/92 alleging that he alongwith others namely Shri S.Sengupta, Dy.Sales Manager and Shri A.K.Jain, Senior Sales Officer, Sohagpur Area deliberately committed dishonesty/ fraud in connection with the supply of coal without receipt of the payment at all or through part payment by producing ifalse and fake money receipts. It was alleged that he individually in connivance with other involved in executing deliberate order of coal illegally in violations of circular/guidelines issued from time to time with ulterior motive. It was alleged in the chargesheet that he committed misconduct under Clause 26.1, 2, 3, 5, 12,13, 39 of standing orders. He was suspended as per order dated 23-1-92. Ist party workman further submits that standing orders are not certified. That he submitted reply to the chargesheet denying charges against him. Disciplinary Authority General Manager instead of supplying documents as per letter dated 30-1-92 appointed Enquiry Officer Shri Gahare and Presenting Officer B.N.Mishra. Ist party workman reiterates that he was not supplied documents by Enquiry Officer. He was advised to take inspections. That the documents requested by him pertains to accounts, cheques and related figures. The enquiry was not properly conducted. Enquiry was conducted on various dates. Statements of witnesses of management were recorded without supplying any documents. Management's witnesses were cross examined, enquiry is not conducted following principles of natural justice. Enquiry is vitiated. The findings of Enquiry Officer are perverse. Enquiry Officer was biased. Cross examination of Shri Dhandharia was not allowed. On such ground, workman submits that order of dismissal be set aside. He prayed for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement at Page 7/1 to 7/20. 2<sup>nd</sup> party submits SECL is registered under Company's Act having office at Bilaspur. Sohagpur Area is under control of the General Manager. Workman was transferred to Baikunthpur Area, he was released on 12-9-91. Said transfer order was revoked. Workman was issued chargesheet dated 23-1-92. The details of the charges against workman are given in para3 of the Written Statement. That Ist party had prepared and got signed 17 delivery orders without having received value of coal covered in the said delivery orders. Shri Ansari prepared and got signed delivery order No. 446 for a quantity of 110 tones of coal on receipt of only part payment of Rs. 5000/- against the actual value of Rs.38,693.60. he induced receipt of Road Release Orders from the Sales and Marketing Deptt, SECL. He got prepared and signed 11 delivery orders against expired / invalid road release orders. He got signed DO No. 211B dated 31-3-91 for a quantity of 1155 tones of coal against RRO No. 4483/2941 dated 5-11-90 covering quantity of 580 tones of coal. Shri Ansari prepared one DD No. 452 dated 18-6-90 against 2 RROs No. 296/11300 dated 10-4-90 & No. 7184/4984 dated 18-2-91 which is violative of rules. He prepared and got signed 16 delivery orders without collecting customers copy, Shri Ansari entertained 15applications from the coal consumers which were incomplete , he also entertained 2 applications from the customers which did not bear signature of the customer concerned. Shri Ansari prepared and got signed 7 delivery orders in which he changed the mine stipulated for lifting coal, he got signed 5 delivery orders in which he has changed the grade of the coal. Shri Ansari failed to maintain records and preserve paper/ documents properly concerning Road Sale of coal in the Sales Deptt. of Sohagpur area.

4. Ist party workman submitted reply to chargesheet dated 30-1-92, reply found unsatisfactory. DE was initiated, Shri H.P.Gupta was appointed as Enquiry Officer, B.M.Mishra as Presenting Officer, Enquiry was conducted on various dates, the details are given in para-5 of the Written Statement. 2<sup>nd</sup> party reiterates that enquiry was properly conducted. The Enquiry Officer submitted his findings that charges against workman are proved. That workman was involved in gross misconduct of theft, fraud, dishonesty considering the proved charges. Punishment of dismissal was imposed against workman as per order dated 21-11-97. 2<sup>nd</sup> party has referred to ratio held in various cases and submits that if the punishment of dismissal imposed against workman is legal, it is also reiterated that workman was given reasonable opportunity for his defence. The documents produced before Enquiry Officer were supplied to him. Enquiry was properly conducted. 2<sup>nd</sup> party denied that workman was not supplied relevant documents. On such ground, 2<sup>nd</sup> party prays claim of workman be rejected.

5. As per order dated 25-6-2015, enquiry conducted against workman is found legal.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman are proved from evidence in Enquiry proceedings?	Charges under Clause 26.3,5,12,13,39 are proved and charges under Clause 26.1,2 are not proved.
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. Point No.1- As per order dated 25-6-2015, enquiry conducted against workman is found legal. Whether the charges alleged against workman are proved requires to be decided from the evidence in Enquiry Proceedings. Charges against workman are clearly mentioned in Exhibit W-1 pertains to clause 26.1, 2, 3, 5, 12, 13 & 39 of the standing orders. Clause 26.1 pertains to theft, fraud or dishonesty in connection with employer's business. Clause 26.2 pertains to taking or giving of bribe or illegal gratification whatsoever in connection with the employer's business or property is not supported by evidence of management's witnesses. The articles of charges are alleged against workman has produced at Exhibit W-17. The charges pertains to thousands of tons of coal supplied to various parties. Presenting Officer elaborated the charges producing documents Exhibit M-1 to M-1/6 various documents applications for allotment of coal cash receipts, DO letters, documents were admitted in evidence from Exhibit M-1 to M-20. Management's witness Shri P.S.Agrawal confirmed documents delivery order, road release orders Exhibit M-1 to M-20 Shri P.S.Agrawal management's witness has narrated as to what those documents pertained and confirmed its contents. In his cross-examination, he did not remember whether he had signed the delivery orders as Sales Officers, he denies to have received circular from SECL headquarters. In Dhanpuri OCM, that after receipt of DO from management's office, he used to enter the details in register DO No., date, parties name, size, quantity. He remember whether he noticed different writings on same DO or any overwriting. That as per his memory, he used to send balance certificate to Area Office after getting re-validation. He denies that finding out closing stock of coal in the colliery.

8. Management's witness Shri S.K. Singh confirmed coal value against DO Nos Sl.No.1 to 18 that DD were deposited as per the dates, name of Bank Account and dates given in the column. That DD No. 72648 dated 19-1-91 was deposited in Area Sale Account. MR in duplicate were sent to Area Sales Department. Management's witness Vali Mohd Khan is on the point that he was preparing production and dispatch report and in other report in respect of production and dispatch as desired by the officers. He was sitting in front of Ansari he was acquitted with jb performed by Ansari. The consumers used to come to Area Sales Manager necessary for verification of documents. That Ansari used to prepare DD in 5 copies. He used to prepare the dispatch production report in the first half. That all those Os along with carbon papers complete or incomplete were being sent to Area Sales Manager on the close of the day work. No assistant was provided to Ansari for road sale work. In his cross-examination, he denies to have been involved in preparation of delivery orders with Ansari. He denies to have been given responsibility anywhere to process allotment application of parties for road release. He denies that Area Sales Officer were given responsibility for circulating instructions. Shri S.K.Sengupta Management's witness in his evidence says that consumers used to come to Area Sales Manager along with allotment application supported by RRO. Sales Manager used to check paper with RRO and used to send it to concerned dealing clerk for disposal. Delivery orders were issued to consumers on first come first services. Money receipts against DD were prepared in triplicate and one copy was received to consumer and other copy is released in Account department. The concerned dealing clerk seeing money received used to prepare DO. Sometimes Account clerk used to send statement showing the money receipt, against the draft deposited by consumers. Shri S.K.Sengupta in his cross says first consumer used to report to Area Sales Officer along with RROs and allotment application. The same were handed over to Ansari by Area Sales Officer. That documents Exhibit M-1/I to M2/I were not prepared by him, the same were prepared by Shri Ansari. He did not feel necessary to report to Area Sales Officer. The statement of Ist party workman is also recorded w.r.t. the charges. No doubt charge under Clause 26.3,5,12,13,39 alleged against workman are established from the evidence of management's witness. It is matter of a deep concern that though the charge against Ist party workman was alleged along with Shri Sen Gupta Dy.Sales Manager, Shri A.K.Jain Sales Officer. The enquiry is conducted only against workman who was working as special clerk. The evidence on record shows that the applications for coal were received by Sales Manager etc. It appears the management has not taken any action against them. The delivery orders, road release orders were signed by the Sales Manager, Dy.Sales Officer etc. For unknown reasons, the higher officers involved in the matter who signed the material documents are protected, it appears any action is not taken against them. From evidence on record, charges except 26.1,2 are proved. Accordingly I record my finding in Point No.1.

9. Point No.2- The charges proved against workman pertains to serious and gross misconduct committing fraudulent acts causing loss to SECL w.r.t. supply of thousands of ton of coal therefore punishment of dismissal imposed against workman cannot be said shockingly disproportionate. No interpretation in punishment is called for. Punishment of dismissal is legal. Issue No.2 is answered accordingly.

10. In the result, award is passed as under:-

- (1) The action of the General Manager, Sohagpur Area of SECL, PO Dhanpuri, Distt. Shahdol in dismissing Shri Atique Mohd. Ansari, Spl. Grade Clerk from services w.e.f. 20/21.11.97 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 163.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 301/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/185/95-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 163.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 301/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 11.01.2017.

[No. L-22012/185/95-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/301/97

General Secretary,  
MP Koyla Mazdoor Sabha,  
Post Jhagrakhand Collieiry,  
Distt. Surguja

...Workman/Union

#### Versus

Sub Area Manager,  
Bijuri Sub Area of SECL,  
Post Bijuri Collieriy,  
Distt. Shahdol

...Management

#### AWARD

Passed on this 26<sup>th</sup> day of September 2016

1. As per letter dated 10-9-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/185/95-IR(C-II). The dispute under reference relates to:

“Whether the demand of the MP Koyla Mazdoor Sabha for regularization of services of 133 contract workers (list enclosed) of Bijuri Sub Area of Hasdeo Area of SECL by the management of SECL is legal and justified? If so, to what relief are the workmen entitled and from which date?”

2. After receiving reference, notices were issued to the parties. Ist party Union submitted statement of claim at Page 3/2 to 3/6. Case of Ist party Union is that it raised dispute w.r.t. regularization of 133 workers in Bijuri underground mine engaged for drivage of stone drift connecting B seam to C Seam. The management had contented that workers

were engaged by contractor. The conciliation proceeding ended in failure. The Government did not refer dispute for adjudication. Writ Petition No. 171/97 filed by Union as per directions issued filed order dated 7-7-97 in said Writ Petition, the dispute has been referred.

3. Ist party Union submits that workmen connected with dispute had been engaged for job of drivage of stone drifts between B Seam and C Seam of Bijuri underground mine in November 90. Their services were illegally stopped in February 1992. Workmen were paid Rs.20 per day for job deployed in mine. As per the Union, NCWA wages are applicable to all those workers. They cannot be paid less than the minimum wages of Category I wages under NCWA-IV. That workmen were engaged in mining operations in underground mine for drivage of stone drifts to connect B Seam to C Seam of coal of Bijuri Mine. That gap between B Seam and C Seam was well detected in advance after due geological survey as well as preparation of plan by coal mine planning and designing Institute. The plan and project are in strict possession of the management of Bijuri Sub area. That mining operation is to be started according to the project report. Union has claimed directions for production of plan and project.

4. Ist party Union further submits that services of workmen were utilized in mining job therefore the rules, regulations and circulars issued from time to time are to be followed strictly by the management. The workers were working under supervision and control of the statutory certificate holders of the management. That contractor was a mere device and has no existence in the eye of the law. That contract was awarded against prohibited nature of work. The work was prohibited as per notification dated 21-6-88, Item V. The verbatim of Item V is reproduced “Driving of stone drifts and miscellaneous stone cutting underground.” Ist party Union further submits that the work is part and parcel of the mining operation raising of coal. The work comes under Mining Operation inside the mine managed by SECL, Bijuri Sub Area of Hasdeo Area. The workers are said to be persons employed in mine as per Section 2(1)(h)(vii) of the Mine Act. The workers were working for business of the management. The contractor has no locus stand, it is only a device to defeat the purpose of law. That every person employed in mine has to be paid wages as per NCWA-IV. Every person employed inside the mine under supervision and control of management is deemed to be employee of the management of coal industry. That management should have unconditionally agreed to treat the workers in dispute as their employees paying them wages according to NCWA. The management employed thousands of workers in the industry.

5. Ist party Union reiterates that each and every workers working in the job under CLRA Act 1970 could not be given to the contractor. Such employees are employees of the Principal Employer. On completion of 300 days service, services of employees could not be terminated without complying Section 25-F,N of ID Act. All the workers employed through contractor are employee of the management, they are entitled to permanent employment under the management. That there was no termination of services of workers. They are deemed to be in employment. Any termination which is not accepted, will be deemed to be retrenchment without notice, without compensation and without permission from the appropriate Government. In mining operation, management is not justified to engage contractor. It is totally misuse of power and violation of labour laws. Union further submits that there was a practice in Hasdeo Area that management always engaging contract labour in permanent and perennial nature of mining job. Management is not legally entitled to engage them after completion of 190 days in a year. Workers were regularized on company roll. Workmen have worked in side of mining for mining job. Under provisions of Mine Act, management is bound to mark their attendance in Form “C”. Union has referred to the circular issued by Director General of Mines Safety. Attendance register of workers connected with dispute is with the management. Union has requested direction for production of Attendance Register. It is reiterated that the workmen had been engaged in operation of Mining in underground for preparation of drivage of stone drifts for more than 190 days in a year covered under Section 25 B of ID Act. The services of workmen could not be terminated without notice. Workmen worked under supervision and control of the management. Workmen performing the work is prohibited by Government of India as per notification dated 21-6-88. That the relationship of employer employee existed between workmen and management. Termination of their services is in violation of Section 25-F of ID Act. On such ground, Union submits that the workmen are entitled to be reinstated with full backwages. Rather the Union has prayed for regularization of workman with backwages.

6. 2<sup>nd</sup> party management filed Written Statement at Page 18/1 to 18/14 opposing claim of Ist party. 2<sup>nd</sup> party submits that the order of reference carry a list of claimants. The list is vague and incapable of identification of claimants, age address, nature of work are not mentioned in the list. That order of reference must mention about the contract workers, particulars of contractors engaged the claimants are not disclosed. The reference is not tenable. Management had filed applications for better particulars and application for production of documents by Union. Application for impleading contractor was also filed. The claim under reference is highly obelated. As per the claimants, they were illegally stopped from work in February 1992, the dispute is raised in 1997 is not tenable. That the claimants are not workman under Section 2(s) of ID Act. Employment of any person in industry is preceded by appointment following the selection process. The casual labours are engaged for work of temporary nature in absence of regular staff. The claimants have not disclosed their employment with the management which is primary requirement under ID Act. Government has committed error in mentioning the claimants as workman. They are not workmen or even casual worker under Section 2(s) of ID Act. The claimants were never employed. There is no question for regularization of

their services. Government has made reference assuming facts which do not exist. Government decided employer employee relationship exist and there was termination which is incorrect. The reference has been made mechanically without application of mind. The employment of claimants is highly disputed question. Government could not have decided the said question. Government usurp the authority without jurisdiction. The reference is misconceived and liable to be rejected.

7. That 2<sup>nd</sup> party submits appointment in SECL is governed by statutory rules and regulations. The person seeking employment in SECL has to go through the procedure prescribed for appointment. Employment in lower cadre is made only by regularizing list of eligible candidates made through Employment Exchange. It is mandatory for management of SECL to abide directions of Central Government. The vacancies are to be notified to Employment Exchange, recruitment is to be made from other sources. That employment in SECL is covered under Article 16 of the constitution. The reservation policy of Government of India for SC ST OBC handicapped ex-servicemen is required to be followed. The appointment is to be made as per rules and regulations. That SECL is licensed principal. It has to execute several miscellaneous work for starting new mines. The earth work is awarded to the contractor for specific period. For any reasons, such workers could not be completed within stipulated time. The period used to be extended. The work of prohibited category is not awarded to the contractor. The Coal Wage Board are not applicable to the contractor's employees. The contractor used to be granted work subject to obtaining valid licence under CL(R&A) Act which is required to engage more than 20 persons. Management invites tenders from contractors. Contract used to be awarded to local labours. Contract labours are paid lower wages as agreed between contractor and labours engaged. That management never engaged contract labours for execution of perennial nature of job connected with mining operation. The contractor has to maintain statutory record required under CL(R&A) Act in respect of employees engaged by him. That management had invited tenders for work of drivage of incline shaft from Seam B to Seam C at Bijuri colliery. The contractor accepted general terms and conditions. After acceptance of the tender, agreement was executed. The contractor had to submit labour licence from Competent Authority. The contractor submitted licence dated 18-3-91 issued by ALC, Shahdol.

8. 2<sup>nd</sup> party reiterates that the contractor started work availing services of local labours. The labours were engaged by contractor complying the provisions of CL(R&A) Act. The payments were made to the contractor for the work done by him as per agreement. His work could not be completed within stipulated period, provisionally period was extended till 31-12-91. As per letter dated 7-4-92, revised estimate and final completion time for work was allowed. Work awarded to contractor were of civil nature. The work was not of perennial nature. It is reiterated that contractor engaged local labour for execution of work awarded to him. 2<sup>nd</sup> party denies that claimants shown in the list were engaged by the contractor for execution of work under contract.

9. 2<sup>nd</sup> party has denied locus-standi of Union for raising the dispute. The claimants cannot be said members of the Union. That there is no need to produce plan and project report of the mine for deciding dispute under reference. No contract was granted for work of prohibited category. The claimants were never employed by the management of SECL. There is no question of providing employment to them. If claim is allowed, it will amount in violation of Article 4,16 of the constitution. Management never violated labour laws. Recruitment can only be done according to the recruitment policy and guidelines of Government. It is not declared by signatory of the statement of claim his particulars of his authority. The pleadings are not verified. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

10. 1st party Union filed rejoinder at Page 20/1 to 20/11 reiterating most of his contentions in statement of claim. Workers have been engaged for work of drivage of incline shaft from Seam B to Seam C. Bijuri mine was opened in 1962 by M/S NCDC. It was abandoned in 1965. After nationalization of mines in 1973. Bijuri mine was reopened on 13-8-74 by WCL. Since 1-1-1986, SECL is managing said mine. That Bijuri Mine has 4 Seam of Coal – A,B,C,D. A Seam is at the top and has been completely developed and mostly depillared leaving pillars beneath the surface . Seam B is 2<sup>nd</sup> from top seam. This has been completely developed and partly depillared. Seam C is third from top. The coal production of Seam C started from 1-1-1993 and whole production not come from Seam C. Seam D is the bottom and it is virgin. For starting production from C Seam at Bijuri Colliery, the claimants were engaged for drivage of stone drift connecting B Seam to C Seam from November 90 to Feb-92. That the work of drivage of shaft and miscellaneous stone cutting in underground is prohibited by Notification dated 1-2-75. Other contentions in Written Statement filed by management have been denied.

11. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether it is proved that workmen connected with the dispute were engaged for work of prohibited category and claimants are employees of SECL?	In Affirmative
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(ii) Whether the contractor engaged by SECL is bogus?	In Negative
(iii) Whether the demand of the MP Koyla Mazdoor Sabha for regularization of services of 133 contract workers (list enclosed) of Bijuri Sub Area of Hasdeo Area of SECL by the management of SECL is legal and justified?	Partly in Affirmative
(iv) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

12. Before specifically dealing with the above points, it is appropriate to deal with the controversy between parties whether the Union has locus to raise and prosecute the dispute under reference. 2<sup>nd</sup> party management has objection to locus of the Union on the ground that there is no employer employee relationship between the claimants pertaining to the dispute. The contractor's labours were not members of the Union. No evidence of the membership and list of subscription of parties is not produced. That the labours were engaged by the contractor as per the agreement Exhibit M-1. With respect to above objections, the documents produced by Union needs to be considered. In Exhibit W-1, application submitted to ALC dated 23-11-92. It finds clear that MP Koyla Mazdoor Sabha Union was authorized by workmen to raise dispute for redressal of their grievances. Annexure I photocopy of authorization given by workman. The workmen concerned have submitted all details and information which is attached as Annexure II, it contains name of workman, father's name etc. the information regarding vocational training. Management was also having control over their skill, livelihood, the workmen concerned in the dispute have no other alternate for their livelihood. The work started in the month of November 1990. The workmen were stopped in the month of February 1992. It reveals continuous working for more than 12 months. Workmen concerned have been engaged in job which connect B Seam to C Seam of Coal Bijuri Mine. That all workers employed through contractor are employees of management. Exhibit W-2 reply filed by management before ALC- no comments are offered to contentions in para 1,2 of the application. Rather management contended that names of workers are available with the contractor, they were employed by the contractor. However Union has not given any specific details of the period of work, nature of work of individual workers. W.r.t. Para-3, management replied the Union has itself stated that the workers given the information of work of stone cutting and have been paid certain wages. In Para-5, management denied its control over the workers said to have been engaged by the contractor. In para-11, management submitted that Union has already submitted that the workmen concerned were employees of the contractor. This cannot be two different employees. From above documents, it is clear that the authority of the Union for raising dispute was not disputed. After failure of conciliation proceeding, failure report was submitted to the Government Exhibit W-5 dated 4-5-95. Writ Petition was filed by the Union ad dispute has been referred. Considering the documents Exhibit W-1, W-2, the contentions of 2<sup>nd</sup> party management that Union has no locus cannot be accepted.

13. Point No. 1, 2- Both the points are interconnected and therefore needs to be decided together. The parties are in dispute whether the workmen connected with dispute were engaged for prohibited category of work, whether the contract was camouflage and claimants are employees of SECL. 1st party Union filed affidavit of evidence of Amrika Prasad, Khist Kumar & Ramsundar. The affidavit of those witnesses are almost identical that Amrika Prasad says that he along with 132 others were working for connecting B Seam to C Seam of SECL, Hasdeo Area, Bijuri Mine. Incline shaft Drivage of stone drift work was carried by them during November 1990 to June 1992. The work of one stone drift was done. Work was carried in 3 shifts. The labours were engaged by the management. Work was supervised by Superior Mining Sirdar, Overman, Under Manager. They were doing the work of Thasani, Dagani Laying line, drilling dressing, Blasting and collecting stones in the tub etc. they had worked more than 240 days. Their attendance was marked in "C" form register. The instrument like crowbar, drill machine, rod, belcha etc. were supplied by the management. They were paid Rs. 25/- per day. The identical affidavit is filed by Khist Kumar and Ramsundar. In his cross-examination, Amrika Prasad says he was working the management, he was not engaged by the contractor. Appointment letter was given to him the witness corrected he did not remember whether appointment letter was issued to him. He was working during the period 1990 to 1992. After completion of work, he was disengaged. Order of termination was not given to him. He was engaged by Mine Manager Mr. Mehto. He had not produced document pertaining to his name sponsored through Employment Exchange. In his cross, witness reiterates that he was doing work of belcha and drilling in Seam B to Seam C. He was doing said work in drifting, he was given training. He had produced document of training. Those documents are not produced in the case. Token Number was not given to him. The contractor was not paying him wages, the wages were paid from counter in a month. His thump mark was not obtained regarding payment of wages. He denies that the implements were provided by contractor. The witness

explained that the implements for working were provided by colliery store. They were working in group of 45-46. From his evidence, Attendance Register Exhibit W-7 was admitted in evidence. However in his cross-examination, he was unable to tell in what authority, he signed authority Exhibit W-7. He denied that Exhibit W-7 was falsely prepared.

14. Shri Khist Kumar in his cross-examination says that the term Drivage used in his affidavit means a stone drift for going from one layer of coal to other layer of coal making access cutting stone,. That approach from Seam B to Seam C was prepared. He was not knowing contractor. Appointment letter is not produced. He has not produced documents about training given. He had not received Token No. while filling Form B. No remark was made about the leave granted to him in Attendance Register. From his evidence, Attendance Register Exhibit W-8 was admitted in evidence. In his cross-examination, he says he signed Exhibit W-8 on directions of the Manager. Any document in that regard is not produced. He was keeping attendance of the labours. Attendance clerk was maintaining other register marking attendance of the labours.

15. Shri Ram Sundar in his cross examination says that he had himself prepared his affidavit of evidence, he signed on it after fully knowing the contents. Appointment letter was not with him. In his affidavit, his age is shown 34 years., he worked during 1990 to 1992. He was running drilling machine using electricity he was unable to tell its voltage. Jointly 3 labours were doing the work of stone drifting. Suddenly stone was found. Management was aware about it. Work of cutting stone was carried through contactor. He worked under the contractor. After he was recalled and attendance register W-9 was admitted in evidence as secondary evidence. In his cross examination, above witness did not reply to the question on what Sl.No., he had signed. After Union Representative Santosh Kumar gone through attendance register W-9, his name was not found in Attendance Register W-9/1 to 44. He has signed on Exhibit W-9. In his further cross, this witness says Exhibit W-9 is attendance register of labours working in 3<sup>rd</sup> shift. He was paid wages as per attendance in Exhibit W-9. He denies that Exhibit W-9 is falsely prepared by him. He also denied that he not marked attendance of labours.

16. Evidence in cross examination of Khist Kumar shows that attendance of the labours was also marked by Murari Babu. Evidence of all those 3 witnesses doesnot disclose reasons why they were maintaining Attendance Register Exhibit W-7, W-8, W-9 when employee of the colliery was maintaining attendance of the register. In Exhibit W-7, attendance of 59 labours is shown for the period November 90 to June-92. In Exhibit W-9, attendance of 34 labours is shown from November 90 to July 92. All the 3 witnesses of Ist party Union in their affidavit of evidence have stated that they were working from November 90 to July 92. All the 3 witnesses of Ist party Union in their affidavit of evidence have stated that they were working from November 1990 to May/June 1992. In para-3 of the statement of claim filed by Ist party Union, it is pleaded that the claimants workmen were illegally stopped in February 1992. Thus the evidence of all those witnesses of Isdt party w.r.t. Attendance Register Exhibit W-7,8,9 is inconsistent. When the Ist party workmen were discontinued in February 1992, the attendance of workers marked under Exhibit W-7,8,9 by those witnesses cannot be believed. Documents W-7 to 9 were not produced by Union along with statement of claim. Those documents were produced by Ist party along with application dated 1-4-14. Exhibit W-7 to 9 are the zerox copies of so called Attendance Register, the pages appears fresh. Looking to the condition of pages of Exhibit W-7 to 9, it is difficult to believe that those zerox copies were maintained by those witnesses during the period November 1990 to June 1992. Exhibit W-7 to W-9 therefore cannot be said genuine documents therefore are not safe to place reliance.

17. As per Exhibit W-1, information w.r.t. the labours engaged for the work was given by the Union. In reply Exhibit W-2, management has not disputed their engagement. Question remains for consideration is whether the contractor was engaged for prohibited work. On above point, Union relies on Notification Exhibit W-3 dated 21-6-88. Government issued said notification in exercising of powers under Sub section-1 of Section 10 of CL(R&A) Act. Item 5 of the schedule prohibits employment of contract labour in driving of stone drifts and miscellaneous stone cutting underground. The exceptions for the notifications are given that it shall not apply to the quarries in North East Coal Fields which work for few months every year due to heavy rainfall in the area, (b) quarries located by the side of the river in pench valley and similar other patch deposit which can only be worked when the level of river has gone down and during non- rainy season, (c) loading of coal when there is mechanical failure, failure of power or irregular supply of wages by the railway and (d) cutting of stone drifts/ faults which cannot be detected in advance and are of short duration upto six months. Union has produced Exhibit W-4 letter dated 1-2-85 inviting attention to the amended definition of a person employed in a mine. The amendment has clarified the following categories of workers would be considered as person employed in the mine. Item 3 persons employed in operations or services relating to the development of the mine including construction of plant therein.

18. Affidavit of all 3 witnesses of Union are clear that they were doing work of incline shaft, drivage of stone drift in Bujuri Mine underground connecting Seam B to C Seam is not shattered. Rather the cross-examination of all witnesses is devoted whether appointment orders given to them that they were engaged by contractor and not by the management.

19. Management has filed affidavit of witnesses Amiruddin, S/o Shohdat Ali, his affidavit of evidence is devoted on the point that during 1990 to 92, he was posted at Bijuri Mine, Somna colliery. The work of connecting B Seam to C Seam was carried during said period. The work of stone drift was carried under his supervision. He has given size of stone drift 4.2 mtrs. 2.4 mtrs length 161.50 mtrs, 77.50 mtrs. In his cross-examination, witness says he is working as Mining Sirdar in Somna colliery during 1990 to 1992. He was working in Bijuri colliery as Mining Sirdar. Duty of Mining Sirdar is to get the work done safely. Work of drifting, drilling was taken by him from labours. That said work was of stone drift and not of cutting coal. If suddenly stone was found, work of stone cutting was taken though contractor's labours. Work of stone cutting is covered under mining operation. Workers had worked more than 190-240 days.

20. Management's witness Shri P.K. Ghosh in his affidavit of evidence says that he was working as Survey Officer in Bijuri Mine since 11-5-86 to November 992. Work of drivage of incline shaft from B Seam to C Seam was executed under his supervision. Management of SECL had invited tender for the work of drivage of incline shaft B Seam to C, Bijuri Colliery. Agreement for Rs. 24,14,556/- was executed. On acceptance of tender, work order was issued to contractor. The contractor had obtained licence from ALC, Shahdol. Contractor engaged local labours for execution of said work in compliance with provisions of CL(R&A) Act. Contractor submitted periodical bills. Work could not be completed within time, the contract was extended and provisional extension was granted on 31-12-91. The revised estimate and final extension of time for said work was granted as per letter dated 7-4-92. The labours engaged by the contractor were paid minimum wages. From evidence of this witness, documents Exhibit M-1,2 were admitted in evidence. Above witness of management in his cross says he was posted at Bijuri Underground mines. Before starting any mine, project report used to be prepared but Bijuri Mine was exceptional. There was no final project report as mine was started in 1962 and closed in 1965. Bijuri Mine was restored in 1965 without project report. In his cross examination, management's witness stated that without project report mine can be started on the basis of geological report. However he agreed that without project report, it is not possible to start mine without project report. He was unable to tell when Bijuri Mine was started by WCL. In his further cross, above witness says he was working at Bijuri Mine where 3 Seams A,B,C were existed. Later on 4<sup>th</sup> Seam was explored called "D" Seam. He admits that for undertaking work in B Seam, the approach way was undertaken to connect B to C Seam. In his further cross, he admits that every mine used to have two approach ways, way from surface to mine is incline, he explained that way approaching A to B mine is called drift. It is called incline shaft. In Exhibit W-6/1, map drift are shown for sake of convenience. Said operation is shown by green colour in map and Incline No. 1,2 are shown by letters A-1,2. Project Report M-3 is produced. Documents Exhibit M-4 completion certificate, Exhibit M-5 Contractor's licence, M-6/1 to 8 Bills are admitted in evidence on admission of this witness. Above witness of management denies that deliberately the work was shown by authorities to be completed in six months. He denies that the work is covered in prohibited category.

21. Management's witness Avtar Krishnan filed affidavit of his evidence. His evidence is devoted on point he was working as colliery Manager, Bijuri Colliery during 21-5-83 to 28-10-91. That management issued tender notice for work of drivage incline shaft from Seam B to C for Rs. 24,14,556/-. The work commenced on 10-12-90, its date of completion was 9-6-91. The agreement was executed. That the work of drivage of incline shaft from B Seam to C Seam was awarded to contractor as per work order dated 31-5-90. The contractor engaged local labours and submitted periodical bills, completion certificate was issued. Labours engaged by contractor were paid as per the provisions of minimum wages Act. That the persons seeking employment in SECL has to go through the procedure prescribed for appointments. The claimants were never engaged by management neither they worked under SECL, they were not paid wages by SECL, their attendance was not marked in Mine time office. There is no employer employee relationship. Above management witness in his cross says that he had not seen Project report of Bijuri mine. Earlier mines were started without project report. In 1960, such mines were started on report of GSI. Bijuri Mine was started around 1962-64. Before starting mine, survey was carried through CMPDI making holes by bore. Work of connecting B Seam to C Seam was started in 1991. He claims ignorance whether project report was prepared. In his further cross, witness says there were 3 seam A, B, C in Bijuri Mine. For approach way from B to C Seam, work of incline shaft was carried. He denies that stone drift was used. When Map Exhibit W-6(6) was referred to the witness, it is answered that the draft is written in the map. However stone drift was not prepared. Incline shaft was carried. He denies that for work of any incline, drift is used. In his further cross, this witness of management says that the attendance of the contractor's labours is marked in Form C register kept with attendance clerk. This witness admits that incline shaft plans audit work are covered under Mining job. He claims ignorance whether work of connecting B Seam to C Seam, the labours were given training however it is necessary to give training for such work. He admits that without preparing incline shaft coal from C Seam could not be extracted. The work of incline shaft connecting Seam B to C is part of the mining. Turning to documentary evidence produced by management Agreement Exhibit M-1 finds clear reference that the tenders were invited for work of drivage of incline shaft from B to C Bijuri Mines for a sum of Rs. 24,14,556/-. That time was essential to the contract, work was to be completed within six months. Exhibit M-2 work order refers to drill bits, drill rods, detonation etc. were to be supplied to the management on drill panel shall be provided free of cost, drill shall be done by department free of cost. The term and condition annexed with M-2 pertains to contractor shall be

responsible to adhere with the various laws. The corporation shall provide stone materials and land for exploration of machinery. The contractors shall provide skill, unskilled, managerial staff for execution of work and several other conditions. It is surprising to say the maps Exhibit W-6© points A-1 to 2 incline shaft portion shown by green colour shows work carried by contractor underground mines. In Map Exhibit 6(a), the work of Incline 1,2 is shown by appropriate markings.

22. The evidence of witnesses of 1st party that the work of incline shaft, drifting stone was carried underground is not shattered. Evidence on above point is rather corroborated from evidence of management's witnesses. The affidavit of witnesses of 1st party Union are silent how the contractor is ruse, camouflage and bogus the evidence of management's witness about the bills Exhibit M-6/1 to 8 is not challenged that contractor was paid amount as per the bills for the work of incline shaft from B Seam to C Seam. The amount on different counts as per the agreement was deducted. It is not case of 1st party Union that the contractor himself worked as labour when contractor was granted extension of time as per Exhibit M-8. The completion certificate Exhibit M-4 is admitted by 1st party Union. Revised estimate W-9 is also admitted by the 1st party Union. Therefore it cannot be said that those documents are bogus, fabricated. The 2<sup>nd</sup> party has produced contractor's licence dated 18-3-91 Exhibit M-5 only for period of six months though the time was granted. No licence was obtained for further period when time was extended.

23. Evidence discussed above clearly shows that the work of incline shaft A.B as well as the drifting of stone is covered as mining work admitted by management's witness. The Notification issued by Central Government Exhibit W-3 and letter Exhibit W-4 work of driving of stone drifts and miscellaneous stone cutting, development, construction in mine underground employment of contract labour is prohibited to the work of connecting B Seam to C Seam by Incline shaft etc. carried by 2<sup>nd</sup> party therefore contractor is prohibited by Exhibit W-4,5. So far as evidence of management's witnesses carrying said work engaging contractor, evidence of 1st party witnesses and the bills M-6/1 to 8, completion certificate Exhibit M-4 shows that the contractor could not be said bogus. Rather the evidence of 1st party witnesses is silent how the contractor engaged by management was ruse or camouflage.

24. In this regard, management relied on ratio held in case between'

General Manager, OSD Bengal Nagpur Cotton Mills, Rajnandgon versus Bharat Lal and another reported in 2011(1)SCC-635. Their Lordship held what is service agreement between appellant principal employer and second respondent contractor whether a sham. It was for employee to aver and prove that he was paid salary directly by principal employer and not by contractor. First respondent did not discharge this onus and did not establish that he was working under direct control and supervision of principal employer. Merely because officers of principal employer gave some instructions to employee of contractor that would not make him employee of principal employer. Their Lordship further held two well recognized tests are (i) principal employer pays salary instead of contractor and (ii) principal employer controls and supervises work of employee. Merely because officers of principal employer gave some instructions to employee of contractor, that would not make him employee of principal employer.

In present case, as per bills Exhibit M-6/1 to 8 admitted by 1st party, amount for the work of incline shaft was paid to the contractor. The evidence of the witnesses of 1st party that they were paid wages from counter cannot be accepted. The terms of contract Exhibit M-1 clearly provides giving implements, instructions for working, supply of electricity etc. the work was to be carried as per various terms of agreement. The contractor had completed the work, completion certificate is issued by the management. Contractor cannot be said camouflage.

25. Management also relies on ratio held in case of

R.M.Yellati versus Asstt. Executive Engineer reported in 2006(1)SCC 106. Their Lordship held that onus to prove 240 days continuous service lies on workman. Mere affidavit or self serving statements made by workman will not suffice. Evidence Act not applicable to proceeding under Section 10 of ID Act. In cases involving daily wagers, workman can only call upon employer to produce before court nominal muster roll for the given period and other documents if in existence. Drawing adverse inference would ultimately depend thereafter on facts of each case.

Ratio cannot be applied to present case as controversy between parties is whether the contractor was camouflage and the claimants are employees of the management. Engagement of workers by contractors for completion of work during the period November 90 to February 92 is not shattered in cross-examination. The application for impleading contractor has been opposed. The ratio held in the case is not helpful to decide controversy between parties whether contract was bogus.

Management Representative also relies on ratio held in

International Airport Authority of India versus International Air Cargo Workers Union and another reported in 2009(13)SCC-374. Their Lordship dealing with Section 2(1)(b) and (10) of Contract Labour (Regulation and Abolition)Act 1970 and whether labour contract was genuine or sham held such dispute is maintainable before industrial adjudicator even if there is no notification for abolition of contract labour under Section 10(1) of the Act.

Industrial adjudicator can declare that the so called contract labor are in fact direct employees of principal employer and contract is only a camouflage to deny employment benefits to employees. Their Lordship held if contract is genuine and there is also no notification abolishing contract labour under Section 10(1), principal employer cannot be directed to absorb contract labour.

In present case as per the evidence discussed above, the contract appears genuine. However the work of incline shaft B Seam to C Seam is prohibited by Notification issued by Central Government Exhibit W-3 and letter Exhibit W-4. The ratio held in the case cannot be beneficially applied to present case at hand for deciding whether contractor is camouflage. However the work for which the contractor has been engaged as per agreement Exhibit M-1 is of prohibited category for the contract labours.

Ratio held in the case cannot be beneficially applied to case at hand. Besides above, the facts of above cited case are not comparable considering the ground of litigations and after formation of employees society, the workers were engaged.

26. Ist party Union relies on ratio held in case between

Secretary, HSEB versus Suresh and other reported in 1999(3)SCC-601. Their Lordship dealing with employer employee relationship employee of the establishment or contract labour. Determination of applicability of doctrine of lifting of the veil. Their Lordship held on facts Safai Karamcharis engaged through the so called contractor for keeping the Main Plant building of Haryana State Electricity Board at Panipat clean, held were employees of the Board. Their Lordship held words used in CL(R&A)Act 1970 should be given widest possible interpretation. That the nature of establishment in which contract labour can be abolished such establishments held are only those of a perennial nature and not those for seasonal working.

Government has prohibited employment of contract labours by issuing notification Exhibit W-3 and amendment letter Exhibit W-4. Ist party claimants were engaged by contractor for prohibited work. However the evidence on record cannot establish that the contractor was camouflage.

Ist party Union relies on ratio held in case between Hussain bhai versus Alath Factory Tezhilali Union and others reported in 1978-LAB-I.C.1264. Their Lordship dealing with Section 2(s) and (g) of ID Act held where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another that other is in fact the employer. He has economic control over the workers subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment, it is found though draped in different perfect paper arrangement, that the real employer is the management not the immediate contractor.

In present case, from evidence on record the contractor was engaged for work prohibited for contractor's labours, ratio cannot be applied to case at hand.

Ist party Union has also relied on ratio held in case between Registrar General, Calcutta High Court versus Shrinivas Prasad Shah and others reported in 2013(12)SCC-364. Their Lordship held that applicability of decision depends on similarity/ identity of similar facts.

Union also relies on ratio held in case between M/S Western India Match Company Ltd. Versus Western India Match Company Workers Union and others reported in 1970(1)SCC-225. Ratio held in the case pertains to on refusal of Government making reference, legality of subsequent reference by Government and meaning of "at any time" used in the Section 4(k) of UP ID Act.

In present case, after failure report submitted to Government in the year 1995, Union filed Writ Petition and dispute raised by Union has been referred. Ratio held in the case therefore is not relevant to the controversy between parties.

Union also relies on ratio held in case between National Small Industries Corporation Ltd. Versus Harmeet Singh Paintal and another reported in 2010(3)SCC-330. Their Lordship dealing with Article 141 of the constitution held decision of similar bench( 2 Judges) bench cannot overrule decision. From the evidence discussed above, contractor was engaged for work of prohibited category is proved. However from the evidence discussed above, it is not established that contractor engaged by 2<sup>nd</sup> party is bogus. Therefore I record my finding in Point No.1 in Affirmative, Point No.2 in Negative.

27. Point No.3- In view of my finding in Point No.1 2<sup>nd</sup> party management engaged contractor for prohibited category of work, demand of Union for regularization of services of 133 contract labours shown in the list with order of reference needs to be considered. On the point, 2<sup>nd</sup> party management pointed out my attention to ratio held in case between

Secretary, State of Karnataka and others versus Umadevi and others reported in 2006(4)SCC-1. Their Lordship in Para 45,49 of the judgment held it is not as if the person who accepts an engagement either temporary or casual in nature is not aware of the nature of the employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain, not at arm's length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. Their Lordship further held when the Court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced.

28. Both parties have relied on ratio held in case between

Steel Authority of India Limited and others versus National Union Water Front workers and others reported in 2001(7) SCC-1. 2<sup>nd</sup> party in Written notes of argument pointed out attention to Para-96 of the judgment. Their Lordship observed whether as a consequence of non-compliance with Sections 7 and 12 of CL(R&A)Act by Principal Employer and the licensee respectively, contract labour employed by the Principal Employer would become its employees of the principal employer. Having noticed the observation of the three Judge Bench of this Court in standard Vacuum case and having pointed out that the guidelines enumerated in sub Section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal. In said case, it was held that the only consequence was that provision under Section 23 and 25 as envisaged under the CLRA Act had violated provisions of the Act and rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer.

My attention was pointed out to Para 68 & 125 of the judgment. On behalf of 1<sup>st</sup> party Union in Para 68, their Lordship have considered Section 10 CL(R&A)Act prohibiting employment of contract labour is neither spelt out in Section 10 nor indicated anywhere in the Act. In our view, the following consequences follow on issuing a notification under Section 10(1) of the CLRA Act-

- (1) Contract Labour working in the establishment concerned at the time of issue of notification will cease to function;
- (2) The contract of principal employer with the contractor in regard to the contract labour comes to an end;
- (3) No contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;
- (4) The contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour.
- (5) The contractor can utilize the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it will be available.
- (6) If a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of ID Act.

Their Lordship further discussed point now under consideration is whether automatic absorption of contract labour working in an establishment is implied in Section 10 of the CLRA Act.

In para 125 of the judgment, their Lordship have given the abstracts of their discussion. Judgment in Air India case is overruled prospectively.

Clause (5) held on issuance of prohibition notification under Section 10(1) of CLRA Act prohibiting employment of contract labor or otherwise in an industrial dispute brought before it by any contract labour in regard to the conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with the various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so called contract labor will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

If the contract is found to be genuine and prohibition notification under Section 10(1) of CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer

intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Para 125 (5 & 6) clearly provides for preferential employment of contractor's labours employed in violation of Notification issued under Section 10(1) of the Act. The above cited judgment is by 5 Judges Bench of the Apex Court. Therefore ratio held by their Lordship in Air India Statutory Corporation and others versus United Labour Union and others reported in 1997(9)SCC-377 cannot be followed. Said judgment has been overrules by their Lordship in above cited judgment.

29. Ist party Union has also produced copy of judgment in

CWJC No. 1140 of 1994. From Para 36 of the judgment, it is clear that out of 52 persons, identification of only 36 workmen were made in M/S/908. His Lordship further discussed that workman who have been so identified by Tribunal under direction of the Court in the year 1989 covered under the impugned award dated 14-8-92. This is all the more justified for the reason that after such a long lapse of time from the delivery of the impugned award on 14<sup>th</sup> May 1992 and that too when only 36 workmen had been identified in the year 1988, any such exercise to identify the remaining workmen would give rise to several fictitious claims and unnecessary litigations on this score.

In present case, 2<sup>nd</sup> party had asked better particulars of the claimants. Said application was opposed. Only Ist party has examined only 3 claimants namely Amrika Prasad S/o Premal - Sl.No.40 in the list, Khist Kumar S/o Simon- Sl.No.10 & Shri Ram Sundar S/o Dashrath - Sl.No. 73. In evidence, age of Ram sundar is shown 33 years, he is illiterate. All the workers are from rustic group of society. Their evidence remained unchallenged that after their disengagement in 1992, they were unemployed. Management has not produced any evidence that they were gainfully employed. The evidence about unemployment of rest of the claimants by witnesses of Ist party would remain unshattered. In view of Para 68, 125(5) of the judgment in 2001(7) SCC-1, as the contractor was engaged for prohibited category of work, above 3 claimants deserves absorption in service with 30 % backwages from date of order of reference i.e. 10-9-97. Those claimants would be entitled for absorption in service only after submitting the documents about their age. Out of total 133 claimants, Ist party in its notes of argument submits that 10 claimants namely Lakhan S/o Gogala, Nathuram S/o Dashrath, Ramadhar S/o Bechan, Dadani, S/o Mahadeo, Balesingh S/o Kunjay Lal, Mansingh S/o Brijlal, Parasnath, S/o Haridwar, Sitaram S/o Nanki, Kampotar S/o Laluva & Shivram S/o Ram Sajeewan have got employed. Therefore they are not allowed any relief in the matter. Union has also submitted in its notes of argument that 7 claimants namely Brijlal S/o Mohan, Tulsidas S/o Mohaqn, Bhagwandas S/o Shivnathram, Chhavilal S/o Rai Singh, Sundarlal S/o Bandhu, Mushtak S/o Abdul Razak and Rana S/o M.C.Mukherjee died during pendency of reference. However details of their death are not furnished. The details of age and identity of rest of claimants is not submitted by Ist party Union. However information about engagement of claimants was submitted by Union while raising dispute as per Exhibit W-1. Engagement of contract labour was not disputed by the management in its Reply Exhibit W-2. Those claimants were engaged by contractor till February 1992 for about 14-15 months. Considering above facts, compensation Rs.50,000 to rest of the claimants shown in the list with order of reference is appropriate. Accordingly I record my finding in Point No.3.

30. In the result, award is passed as under:-

- (1) Demand of Union is partially accepted as per final award.
- (2) List of claimants annexed with order of reference shall be part and parcel of award. 2<sup>nd</sup> party is directed to reinstate workmen namely Amrika Prasad S/o Premal - Sl.No.40 in the list, Khist Kumar S/o Simon- Sl.No.10 & Shri Ram Sundar S/o Dashrath - Sl.No. 73 with 30 % backwages.
- (3) The 10 claimants namely Lakhan S/o Gogala, Nathuram S/o Dashrath, Ramadhar S/o Bechan, Dadani, S/o Mahadeo, Balesingh S/o Kunjay Lal, Mansingh S/o Brijlal, Parasnath, S/o Haridwar, Sitaram S/o Nanki, Kampotar S/o Laluva & Shivram S/o Ram Sajeewan who are in employment of 2<sup>nd</sup> party are not allowed any relief. Rest of the claimants including deceased are allowed compensation Rs. 50,000/- each.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 164.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक

अधिकरण/श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ सं. 9/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-35011/4/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 11th January, 2017

**S.O. 164.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 11.01.2017.

[No. L-35011/4/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Wednesday the 30<sup>th</sup> day of November, 2016/09<sup>th</sup> Agrahayana, 1938)

#### ID 9/2013

Union	:	The General Secretary, Cochin Port Staff Association, Wellington Island, COCHIN – 682009.  By Adv. Shri. A. V. Xavier
Management	:	The Chairman, Cochin Port Trust, W/Island, COCHIN - 682009.  By M/s. B. S. Krishnan, Associates

This case coming up for final hearing on 24.11.2016 and this Tribunal-cum-Labour Court on 30.11.2016 passed the following:

#### AWARD

In exercise of the power conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the following dispute before this Tribunal for adjudication.

2. The dispute referred for adjudication is:

**‘Whether the action of the management of Cochin Port Trust in allowing to retire its employees at the age of 58 during the pendency of conciliation and thereby denying them the salary and other eligible benefits, is legal and justified ? What relief the workmen are entitled to?’**

3. After receipt of the reference order No.L-35011/4/2012-IR(B-II) dated 13.12.2012, issued by the Ministry of Labour, Government of India, summons was issued to the parties to submit their pleadings, and produce documents to substantiate their respective contentions. On receipt of the summons, the parties entered appearance through their respective counsel.

4. The averments in the claim statement filed by the union in brief are as follows:-

The Cochin Port Staff Association is a registered union with registration No.388/81, affiliated to All India Port and Dock Workers' Federation (AIP & DWF) and International Transport Workers Federation (ITF). The union is competent to raise the industrial dispute in relation to its members who are employed in the management. Cochin Port Trust is an autonomous body functioning in accordance with the provisions of the Major Port Trusts Act, 1963. The Port Trust Board is having the authority to frame regulations under the Act. The Port Trust Board is having a regulation by name “The Cochin Port Employees (Retirement) Regulations, 1977”. Any change in the Regulations has to be approved by the Board and notified in the Official Gazette of the Government of India and the State Government

where the major port is situated as per the Major Port Trusts Act, 1963 under Section 111 of the Major Port Trusts Act which empowers the Government to direct the Port Trust on policy matters. As per the provisions in the Act it is mandatory on the part of the Government to direct the Port Trust on policy matters. As per the provisions in the Act it is mandatory on the part of the Government to inform the respective Port Trust Board and obtain their views before issuing any direction in relation to policy matters.

5. The dispute referred for adjudication has emerged from the roll back of retirement age from 60 to 58. In this regard the Government has not taken any policy decision. As per Order No.A-38011/5/98-PE.1 dated 28.05.1998, issued by the Ministry of Shipping and as per Office Memorandum No.25012/8/98-Estt.(A) dated 30.05.1998, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, the age of retirement in autonomous bodies/organizations has to be raised to 60 years at par with Central Government employees. As per the above said orders the employees of all major ports were enjoying the benefit of retirement age of 60 years. On 17.04.2000, the then Joint Secretary (Ports) – Shri. K. V. Rao wrote a D.O. letter to all the Chairmen of major ports advising them to consider the roll back of retirement age from 60 to 58 years in order to reduce the manpower. Subsequently the then Secretary of Surface Transport – Shri. Vasudevan wrote a D.O. letter dated 04.08.2000 to all the Chairmen referring to the letter of Shri. K. V. Rao and expressed his concern over the delay in placing the proposal for reducing the retirement age from 60 to 58 years before the Port Trust Board. Thereafter Shri. K. V. Rao issued another D.O. letter dated 13.09.2000 as a reminder to his earlier letter.

6. From the D.O. letters referred above it is evident that the Government of India has not taken any policy decision to reduce retirement age from 60 to 58 years. On the basis of the D.O. letters referred above the management of Cochin Port Trust unilaterally and arbitrarily decided to reduce the retirement age from 60 to 58 years as per Board Resolution No.72 dated 18.10.2000. The management was compelled to take such a decision solely on the basis of the threatening instructions and pressure exercised on them by the Secretary and Joint Secretary, Ministry of Shipping. There is no legal basis to arrive at such a decision. The amendment regarding the retirement age and reducing the retirement age from 60 to 58 years has not been notified in the Official Gazette of the Government of Kerala.

7. In the agenda of the Board meeting it is decided to reduce the retirement age. It is specifically stated that the decision to roll back the retirement age was taken due to the persistent pressure by the Secretary, Ministry of Shipping through a D. O. letter and not based on any policy decision by the Government. Therefore the amendment made by the management as per Resolution No.72 to roll back the retirement age from 60 to 58 is arbitrary, illegal, ultra vires and not sustainable in law.

8. The Government of India before enhancing the retirement age of Government employees in accordance with Article 309 of the Constitution amended the relevant rules in the Fundamental Rules (Amendment) Rule, 1998 in order to incorporate the provisions of retirement age as 60 years. On the basis of which all the major ports also amended the respective retirement regulations in order to incorporate the amendment of enhancement regarding retirement age. Therefore it has become part of the service condition of the major port employees. The direction as per the D.O. letters issued by the Secretary and the Joint Secretary, Ministry of Shipping cannot be accepted as the policy decision of the Central Government.

9. The management decided to roll back the retirement age from 60 to 58 years without following the legal procedures to be adopted while amending the existing service conditions as required under the Industrial Disputes Act. The Industrial Disputes Act specifically provides that while changing any of the existing service conditions or facilities extended to the employees, it should be done only after issuing the notice of change under Section 9A and only after hearing the views and objections of the affected parties/employees. In the matter in issue the management Port Trust administration has not complied the statutory requirement. Apart from this the unilateral decision of the management to alter the service conditions is clear violation of Clause Nos. 35 and 36 of the Section 12(3) Settlement dated 02.08.2000 entered into between the management and federation of unions.

10. On 22.03.2000 the union raised the industrial dispute before the Assistant Labour Commissioner (Central) challenging the anti-labour and illegal decision of the management to roll back the retirement age from 60 to 58 years. On 01.11.2000 the union served strike notice in accordance with the provisions of the Industrial Disputes Act intimating their intention to go on strike from any day after 15.11.2000, against the decision of the management to reduce the retirement age. The Regional Labour Commissioner(Central) initiated conciliation proceedings as provided under Section 12 of the Industrial Disputes Act. The management attended conciliation meeting on 13.11.2000 and obtained adjournment. The conciliation officer advised the management not to alter the service conditions during the pendency of conciliation. The conciliation proceedings continued on several dates and finally on 28.08.2007 the parties to the conciliation proceedings were informed that the Ministry has reinstated the age of retirement of Port and Dock Workers from 58 to 60 years effective from 30.09.2007.

11. During the pendency of conciliation proceedings the services of several employees were terminated at the age of 58 years by violating the provisions of Section 33 of the Industrial Disputes Act. Therefore these employees are entitled to get salary and other benefits for the denied period of service of 2 years. Moreover the retirement benefits

ought to have been recalculated taking their service up to 60 years and the amount thereof to be paid to them. There are 12 workers with different tenure of services of 7 years 10 months to 9 years 4 months among the workers who were compelled to retire at the age of 58 years. Since they were superannuated at the age of 58 years they could not complete service of 10 years, the eligible service for minimum pension. In this case in addition to the service for two years the pension benefits also have to be granted to those employees who were superannuated at the age of 58 years. Therefore the union has requested to hold that the action of the management of Cochin Port Trust in allowing the employees to retire at the age of 58 years during the pendency of conciliation proceedings and thereby denying them the salary and other eligible benefits is not legal and justified and to pass an award directing the management to give them the service benefits up to the age of 60 years and difference in retirement benefits and pension benefits.

12. The contentions in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the union, except those that are specifically admitted. There are two modality unions functioning in the Cochin Port Trust. Apart from this there are too other unions. The dispute was raised by the Cochin Port Staff Association. From the reference order it is not clear as to whether the employees who are affected by the rolling back of retirement age from 60 to 58 years are represented by the union. The employees who are affected by the rolling back of retirement age are members of the other unions also. In the absence of any dispute raised by the other unions, there is no bonafides on the part of the union in this reference to agitate the issue on behalf of the affected employees.

13. The appropriate Government has not referred the dispute raised by the Cochin Port Employees Organisation and Cochin Port Wharf Staff Association. The request for reference made by those unions was declined on the ground that the decision of the management to reduce the retirement age was in accordance with the policy decision of the Government. Since the request for reference by the aforesaid two unions was declined by the appropriate Government, there is no justification to refer the dispute raised by the union in this case. Since the Government has not applied its mind while referring the dispute involved in this case, there was no justifiable grounds to refer the dispute.

14. The Cochin Port Thozhilali Union and some workmen who are affected by the rolling back of retirement age approached the Hon'ble High Court of Kerala by filing WP(C) No.33685/2000; WP(C) No.34149/2000 and WP(C) No.8492/2001. The Hon'ble High Court dismissed the Writ Petitions holding that in exercise of the powers under Section 28 of the Major Port Trust Act, 1963 regulations have been framed revising the retirement age from 60 to 58 years and that it has been approved by the Central Government under Section 124 of the Act and it was duly published and in view of the intervening developments and the fact that the petitioners have since retired from service and that the retirement age is 58 in all major port trusts in India, there is no merit in the writ petition. The finding in the judgments aforesaid have become final. The issue referred for adjudication ought to have been raised before the Hon'ble High Court. The issue is not liable to be raised in a proceeding under the Industrial Disputes Act. It is against the principles of public policy and barred by the principles of constructive res judicata.

15. The issue of rolling back of retirement age from 60 to 58 years in the year 2001, is an all India issue applicable to the employees of the major ports. Several major ports situated in more than one state are likely to be interested or affected by the decision taken in this matter and therefore the issue ought to have been referred before the National Tribunal.

16. The dispute regarding the reduction in the retirement age of employees of the management arose in the year 2001 and it was referred for adjudication only in the year 2013. During the period from 31.03.2001 to 29.09.2007 the age of retirement of the employees of the management was 58 years. A settled position relating to this issue cannot be unsettled after a long lapse of time.

17. There is a long delay of 12 years in making the reference. The validity of the reference has to be treated as a preliminary point before entering inside the merits of the dispute.

18. Chapter III of the Major Port Trusts Act, 1963 (Act 38 of 1963) deals with the staff of the Board. Section 28 provides that the Board of Trustees can make regulations to provide for the terms and conditions of the employees of the Board. In exercise of that power the Board of Trustees of the Cochin Port framed the Cochin Port Employees (Retirement) Regulations, 1977. This Regulation was approved by the Central Government and published in the Official Gazette as required under Section 124 of the Act. Prior to the amendment in the 1998 Clause III of the Regulations was as follows:

*“3. Age of retirement*

*(a) Except as otherwise provided in these regulations every employee other than those referred to in clause (b) shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.*

(b) A workman/an employee in class IV service or post, who entered Board's service before 21.7.1972 shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.

*NOTE:(1) in this clause, 'a workman' means a highly skilled, skilled, semi skilled, or unskilled artisan employed on a monthly rate of pay in the industrial establishment.*

*NOTE:(2) An employee whose date of birth is the 1<sup>st</sup> of a month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years or 60 years as the case may be."*

19. As per letter dated 28.05.1998 the Government of India, Ministry of Surface Transport informed that the Government has decided to raise the retirement age and that the employees of the major port trust whose age of retirement was 58 years shall retire from service of the port on the afternoon of the last date of the month in which the employee attains the age of 60 years. Accordingly, Clause 3(a) of the Regulations was amended enhancing the retirement age to 60 years. This was approved by the Government of India and it was published in the Official Gazette. Thereafter circular was issued intimating the concerned regarding the enhancement in the retirement age.

20. On a review of the staff strength in the Cochin Port Trust revealed that the manpower was very high and the salary, overtime, bonus etc. crossed 50% of the operating expenditure. Therefore it was necessary to reduce the manpower in the Port to make its operations more cost effective and a proposal to that effect was placed before the Board of Trustees in their meeting held on 24.03.2000. In that Board meeting even though the issue was deliberated in detail no consensus could be arrived at and hence decided to defer the matter to be placed in the subsequent Board meeting. In the meantime the Cochin Port Trust received a letter dated 17.04.2000 from the Joint Secretary, Government of India, Ministry of Surface Transport intimating that the Mumbai Port Trust has rolled back the retirement age to 58 years and that the Ministry would like to commend rolling back the retirement age in respect of Cochin Port Trust as a first step to reduce the excess manpower. Further it was intimated that for the sake of uniformity the Cochin Port Trust also should roll back the retirement age to 58 years. Even though the matter was placed for discussion in the Board of Trustees meeting held on 30.08.2000 in view of the opposition of majority of the trustees, it was decided to defer the issue. Thereafter the Cochin Port Trust received a D. O. letter dated 18.09.2000 from Shri. K. V. Rao, Joint Secretary, Ministry of Surface Transport intimating the necessity of rolling back of the retirement age and requested the Ports to take action for the approval by the Board by convening a special Board meeting. It was also intimated that the ports of Mumbai, Kolkata, Visakhapatnam, Chennai, Tuticorin and New Mangalore have already rolled back the retirement age to 58 years. Accordingly, an urgent special Board meeting was held on 18.10.2000 and after detailed discussion the board resolved to approve the proposal to amend the Cochin Port Employees (Retirement) Regulations, 1977 by rolling back the retirement age from 60 to 58 years as per Section 28 of the Act subject to the sanction of the Government as required under Section 124 of the Act. The gist of the resolution passed by the Board is as follows:

1. *The Board resolved that in the case of employees retiring on 31.03.2001 consequent on the rolling back of retirement age to 58 years, they should be given the benefits of service for calculation of pension had the retirement age remained at 60 years.*
2. *The Board resolved that in case of ex-servicemen who are re-employed in the port and who would have been eligible for minimum pension had the retirement age continued to be 60 years would be allowed notional period of service for computing retirement benefits to be eligible for minimum pension.*
3. *The Board further resolved that workman/employees in class IV service or post, who entered Board's service before 21.7.1972 and continue as class IV/workman shall retire from service on the last day of month on which they attain the age of 60 years."*

21. After due consideration the Central Government approved the amendment regarding reduction of retirement age of employees of the management from 60 to 58 and it was published in the Official Gazette on 12.01.2001. The amendment was introduced and came into effect w.e.f.31.03.2001. The Board of Trustees of the Cochin Port Trust is entitled to frame regulations relating to the conditions of service of the employees of the management and they are entitled to make amendment of the same. Since the amendment is published in the Official Gazette the statutory requirement as per the Major Port Trust Act has been complied.

22. The contention of the union that the Government has not taken any policy decision to roll back the retirement age from 60 to 58 years, is incorrect. It is incorrect to say that the management took a unilateral and arbitrary decision to reduce the retirement age from 60 to 58 years. The contention of the union that there was no compliance of Section 9A of the Industrial Disputes Act on the part of the management is incorrect. Section 9A is applicable only in relation to the change in conditions of service enumerated in Schedule IV of the Industrial Disputes Act. The

reduction/enhancement of retirement age will not come under the purview of Schedule IV and hence Section 9A is not attracted.

23. So also the contention that there is violation of Section 12(3) is absolutely false. The retirement age cannot be considered as a benefit flowing from a wage revision settlement. The dispute pending before the conciliation officer was not a dispute under Section 2K of the Industrial Disputes Act and hence Section 33 of the Act is not applicable to the facts of this case.

24. The action of the management to roll back retirement age from 60 to 58 years during the relevant period is perfectly legal and proper. The employees who retired as per the then existing age of retirement are not entitled to get any salary or benefit for two years as if their retirement age is 60. They cannot claim any wages for the period they have not contributed anything to the management.

25. Nine ex-servicemen and widow of one ex-serviceman have filed WP(C) No.21938/13 before the Hon'ble High Court of Kerala so as to treat that they have retired at the age of 60 for claiming pension as if they have ten years of service under the management. The matter is pending for adjudication. The relief claimed in the claim statement is most unreasonable and has no legal basis. The management has requested to uphold the contentions and disallow the contentions of the union and pass an award accordingly.

26. After filing written statement by the management the union filed rejoinder reiterating the contentions in the claim statement.

27. They have stated that the matter in issue pending before the Hon'ble High Court of Kerala and the matter in issue in this reference are not identical. They have stated that their claim is perfectly just, legal and proper.

28. After affording sufficient opportunity to both sides to take steps and for production of documents, the matter was posted for evidence. On behalf of the union WW1 and WW2 were examined and Exts.W1 to W20 are the documents marked. On behalf of the management MW1 was examined and Exts.M1 to M15 are the documents marked. Heard both sides.

29. The points arising for consideration are:

- “(i) Whether the dispute raised by the union is maintainable in law?**
- “(ii) Whether the dispute referred for adjudication is a matter to be decided by the National Tribunal?**
- “(iii) Whether the dispute referred for adjudication is barred by limitation?**
- “(iv) Whether the dispute raised by the union is barred by constructive res judicata?**
- “(v) Whether the action of the management of Cochin Port Trust not allowing its employees to retire from service at 58 years during the pendency of conciliation is just, legal and proper?**
- “(vi) Whether those employees who retired between 31.03.2001 to 29.09.2007 from Cochin Port Trust are entitled to get salary and all other eligible benefits as in the case of other employees who retired from service at 60?**
- “(vii) To what relief the workmen are entitled?”**

30. **Point No.(i):-** The dispute referred for adjudication before this Tribunal is:

**‘Whether the action of the management of Cochin Port Trust in allowing to retire its employees at the age of 58 during the pendency of conciliation and thereby denying them the salary and other eligible benefits, is legal and justified ? What relief the workmen are entitled to?’**

The Cochin Port Staff Association is a registered union with registration No.388/81 and affiliated to All India Port & Dock Workers Federation and International Transport Workers Federation. According to the union they are entitled to raise the industrial dispute to safeguard the interest of their members who are staff/workers under the management. The management has raised the contention that it is not clear from the reference that the employees who are affected by the rolling back of retirement age from 60 years to 58 years are represented by the union in this case. According to the management other members who are not members of the union involved in this reference were also affected by the rolling back of retirement age and as such the union in this reference is not entitled to raise the issue on behalf of the non-members. Except the averment in the written statement filed by the management there is no document to prove that the workmen who were not members of the union involved in this reference were also affected by the rolling back of retirement age from 60 years to 58 years. According to the union the decision of the management to roll back retirement age has affected their members and hence they are entitled to raise the dispute on behalf of the members of the union. Admittedly, the union at whose instance the dispute was referred for adjudication is a modality union functioning in the Cochin Port Trust. Therefore they are entitled to raise the dispute to safeguard

the interest of their members. Hence Point No.(i) is answered to the effect that the dispute raised by the union in this reference is maintainable in law.

31. **Point No.(ii):-** The management has contended that the rolling back of retirement age of employees of the major ports from 60 years to 58 years in the year 2001 is an all India issue. It is stated that the dispute is of such a nature that several major ports situated in more than one state are likely to be interested or affected by the decision in this reference and hence the issue ought to have been referred before the National Tribunal for adjudication. The challenge in this reference is against the decision of the Board of Trustees of the Cochin Port Trust. They have decided to roll back retirement age of employees from 60 years to 58 by amending The Cochin Port Employees (Retirement) Regulations, 1977 as required under Section 124 of The Major Port Trusts Act. Since the union has challenged the decision of the Board of Trustees of the Cochin Port Trust to roll back the retirement age of employees, it cannot be treated as an issue of national importance affecting other major ports across the country. Since the dispute relates to the decision of the Board of Trustees of the Cochin Port, it cannot be treated as a matter involving national issue. It affects only the employees working in the management of Cochin Port Trust. Therefore the point for consideration is answered to the effect that there is no necessity for deciding the issue by the National Tribunal.

32. **Point No.(iii):-** The management has contended that the dispute regarding reduction of retirement age of the employees of the management arose in the year 2001 and it was referred for adjudication only in the year 2013 and as such the issue has become stale and incapable of adjudication. According to the management there is no bonafides in referring the dispute after a lapse of 12 years. The union has opposed this contention. According to them the matter in issue was pending conciliation before the Regional Labour Commissioner at the initial stage and later before the Chief Labour Commissioner at the national level and it was pending decision for a considerable long period and the delay if any, in taking a decision by the conciliatory authorities is not a matter to conclude that the matter in issue has become stale and incapable of adjudication. The Central Government has referred the dispute for adjudication before this Tribunal. Since the dispute is referred for adjudication by the Central Government, the question of limitation does not arise for adjudicating the matter in issue. Hence the point for consideration is answered against the management.

33. **Point No.(iv):-** The management has contended that some workmen and one trade union viz., the Cochin Port Thozhilali Union who are affected by the rolling back of retirement age from 60 to 58 years approached the Hon'ble High Court of Kerala by filing WP(C) No.33685/2000; WP(C) No.34149/2000 and WP(C) No.8492/2001 and the Hon'ble High Court of Kerala dismissed that Writ Petitions. It is stated that the judgments have become final and conclusive. The management has stated that the raising of the same issue at a later stage is against the principles of public policy and barred by the principles of constructive res judicata. Ext.M3 is copy of the Judgment in OP Nos.33685 & 34149 of 2000 and OP No.8492 of 2001. The union involved in this reference is not a party to Ext.M3 proceedings before the Hon'ble High Court of Kerala. The parties in the Writ Petitions referred above are not parties to this dispute. Moreover the Hon'ble High Court of Kerala has made clear that if any of the petitioners are otherwise entitled for pension treating the age as 60 under the Regulations, it is for them to approach the Port Trust and in which case their eligibility will be duly examined by the Port. Therefore it cannot be held that the matter in issue is barred by the principles of constructive res judicata. Hence the point for consideration is answered against the management.

34. **Point Nos.(v) & (vi):-** In the claim statement the union has stated that the Cochin Port Trust is an autonomous body functioning in accordance with The Major Port Trusts Act, 1963. The Port Trust Board is having the authority to frame the Regulations. The Board framed the Regulation viz., The Cochin Port Employees (Retirement) Regulation, 1977. According to the union any alteration/variation or modification in the Regulations has to be approved by the Board and notified in the Official Gazette of the Government of India and in the Gazette of the State Government wherein the major port is situated. It is stated that as per Section 111 of The Major Port Trusts Act the Government is empowered to direct the Port Trust on policy matters and it is imperative on the part of the Government to inform the respective Port Trust Board and obtain their views before issuing any direction on policy matters. It is stated that the Government has not taken any policy decision in the matter of roll back of retirement age from 60 to 58 years.

35. As per Order No. A-38011/5/98-PE.1 dated 28.05.1998 issued by the Ministry of Shipping, the retirement age of all major port employees was enhanced to 60 years. Subsequently as per Office Memorandum No.25012/8/ 98-Estt.(A) dated 30.05.1998 issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India, the age of retirement in autonomous bodies/ organizations is to be raised to 60 years at par with Central Government employees. It is stated that the employees of all major ports across the country were enjoying the benefit of retirement age up to 60 years as per the orders aforesaid. While so on 17.04.2000 the then Joint Secretary(Ports) Shri. K. V. Rao wrote a D.O. letter to the Chairmen of all major ports advising them to consider the roll back of retirement age from 60 to 58 years with a view to reduce the manpower. On 04.08.2000 the then Secretary of Surface Transport, Government of India wrote another D.O. letter to all the Chairmen referring to Shri. K. V. Rao's letter and expressed serious concern over the delay in placing the proposal to reduce the retirement age from 60 to 58 years before the Port Trust Board. Again the Joint Secretary sent a reminder on 13.09.2000 requiring the

Chairmen of the Port Trusts to consider the roll back of retirement age. According to the union the Government of India has not taken any policy decision to reduce the retirement age from 60 to 58 years. It is stated that the Cochin Port Trust management as per Resolution No.72 dated 18.10.2000 unilaterally and arbitrarily decided to reduce the retirement age from 60 to 58 years. It is stated that the decision of the management to roll back the retirement age from 60 to 58 years has not been notified in the Official Gazette of the Government of Kerala.

36. According to the union the management took the decision to roll back the retirement age from 60 to 58 years without following the legal procedures to be adopted by amending the existing service conditions. It is stated that notice of change under Section 9A of The Industrial Disputes Act has not been issued to the affected parties/unions before implementing the roll back of retirement age from 60 to 58 years. The union has stated that the reduction in the age of retirement amounts to an adverse change in the service condition of the workmen and the modification of the service condition without complying the procedure under Section 9A of the ID Act is invalid. They would also state that the decision of the management to alter the service conditions is clear violation of Clause Nos.35 and 36 of Section 12(3) Settlement signed on 02.08.2000 between the management on the one hand and Federation of the unions on the other. It is stated that during the course of conciliation, the conciliation officer advised the management to comply the procedure under Section 33 of the ID Act and not to alter any service condition during the pendency of conciliation. According to the union the conciliation commenced on 08.11.2000 and it came to an end only on 28.08.2007, on which date it was informed that the Government of India decided to reinstate the age of retirement of Port and Dock Workers from 58 to 60 years w.e.f.30.09.2007.

37. The union has stated that during the conciliation process, on the basis of the decision by the management several workers were terminated at the age of 58 years in violation of the mandatory requirement under Section 33 of the ID Act and as such the decision of the management to roll back retirement age from 60 to 58 is not maintainable in law. The union has stated that in view of the roll back of retirement age from 60 to 58 years, 12 workers who were having service under the management from 7 years and 10 months to 9 years and 4 months could not complete the minimum service of 10 years so as to enable them to obtain minimum pension and apart from this they lost pension benefits and wages for a period of two years when they were terminated at the age of 58 years.

38. The management has disputed the claim raised by the union. They have stated that Chapter III of The Major Port Trusts Act provides that the Board of Trustees of the Board may make regulations to provide for the terms and conditions of the employees of the Board. It is stated that prior to the amendment in the year 1998 Clause III of the Regulations, stood as follows:

*“3.Age of retirement*

- (a) *Except as otherwise provided in these regulations every employee other than those referred to in clause (b) shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.*
- (b) *A workman/an employee in class IV service or post, who entered Board's service before 21.7.1972 shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.*

*NOTE: (I) in this clause, 'a workman' means a highly skilled, skilled, semi skilled, or unskilled artisan employed on a monthly rate of pay in the industrial establishment.*

*NOTE: (2) An employee whose date of birth is the 1<sup>st</sup> of a month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years or 60 years as the case may be.”*

39. While so the Government has decided to raise the age of retirement of the employees of the major Port Trust to 60 years as per letter dated 28.05.1998. The management has stated that a review of the staff strength in the Cochin Port Trust revealed that the manpower was very high and the salary, overtime, bonus etc. have crossed 50% of the operating expenditure. On account of this situation it was necessary to reduce the manpower so as to make the operations in the Port cost effective and accordingly a proposal was placed before the Board of Trustees in its meeting held on 24.03.2000. It is stated that the Board of Trustees could not come to a consensus on the issue and hence it was decided to defer the issue under consideration in the subsequent Board meeting. After the said meeting of the Board of Trustees of the management, they received a letter dated 17.04.2000 from the Joint Secretary, Government of India, Ministry of Surface Transport intimating them to consider the roll back of retirement age to 58 years as in the case of employees in Mumbai Port Trust. It is stated that the Board of Trustees again considered the issue in their meeting held on 30.08.2000 but they could not come to a consensus and hence the matter was deferred for consideration at a later stage. It is stated that in the special Board meeting held on 18.10.2000 the Board resolved to approve the proposal for amending The Cochin Port Employees (Retirement) Regulations, 1977 by rolling back the retirement age of employees from 60 to 58 years subject to the sanction of the Government as required under Section 124 of the Act. The proposed resolution approved by the Board reads as follows:-

“1. *The Board resolved that in the case of employees retiring on 31.3.2001 consequent on the rolling back of retirement age to 58 years, they should be given the benefits of service for calculation of pension had the retirement age remained at 60 years.*

2. *The Board resolved that in case of ex-servicemen who are re-employed in the port and who would have been eligible for minimum pension had the retirement age continued to be 60 years would be allowed national period of service for computing retirement benefits to be eligible for minimum pension.*

3. *The Board further resolved that workmen/employees in class IV service or post, who entered Board’s service before 21.7.1972 and continue as class IV/workman shall retire from service on the last day of month on which they attain the age of 60 years.”*

40. The management has contended that there is no violation of the terms and conditions in Section 12(3) settlement or Section 33 of the Industrial Disputes Act. It is stated that the reduction in retirement age is not a matter specified under Schedule IV for a notice as required under Section 9A of the Act. The management has stated that the amendment to the regulation was forwarded to the Central Government for approval and publication in the Official Gazette. It is stated that the matter was published in the Official Gazette on 12.01.2001. The management has stated that the union is not entitled to the relief claimed as per the dispute referred.

41. In the rejoinder the union has reiterated their claim for restoring the retirement age to 60 years. It is stated that the Government has restored/reinstated the retirement age in respect of Port and Dock Workers from 58 to 60 years w.e.f.30.09.2007. For the period from 30.05.1998 to 30.03.2001 the retirement age of employees in the Cochin Port Trust was 60 years. In view of the subsequent decision of the Cochin Port Trust management, w.e.f.31.03.2001 the age of retirement was rolled back to 58 years. Again the retirement age was restored to 60 years w.e.f.30.09.2007. The crucial aspect to be considered is whether the employees who retired from service during the period from 31.03.2001 to 29.09.2007 are entitled to get the extension of service from 58 to 60 years and are entitled to any statutory benefits. It is stated that the roll back of retirement age from 60 to 58 years was necessitated for the reason that the operating expenditure had crossed 50% of the earnings. It is stated that the management ascertained the reason for the increase in the operating expenditure for more than 50% of the earnings and it was found that the manpower was very high and the salary, overtime, bonus etc. crossed 50% of the operating expenditure. It is true that the management restored the retirement age to 60 years w.e.f.30.09.2007. The definite contention of the union is that there was no policy decision by the Government of India to reduce the retirement age from 60 to 58 years. They have highlighted the concern of the employees who retired during the intervening period. It is stated that some of the employees could not complete the minimum service of ten years so as to become eligible to obtain pension since they were compelled to retire at the age of 58 years.

42. It is to be considered whether the employees who retired from service during the period from 31.03.2001 to 29.09.2007 at the age of 58 years have lost the service benefits for the calculation of pension. The resolution dated 18.10.2000, reproduced in the written statement filed by the management reveals that those who retired at the age of 58 years on or after 31.03.2001 consequent on the rolling back of retirement age to 58 years are entitled to get pension calculating their retirement age as 60 years. Ext.M11, copy of the Gazette Notification reveals that while effecting amendment to the Cochin Port Employees (Retirement) (Amendment) Regulations 2001; the provision regarding the calculation of retirement age as 60 years for pensionary benefits consequent on the rolling back of retirement age to 58 years was omitted.

43. Ext.W5 is copy of the proceedings dated 05.06.1998 of the Board of Trustees of the Cochin Port Trust. As per Resolution No.5 the Board of Trustees of Cochin Port Trust approved the increase of retirement age of employees from 58 to 60 years. That decision was taken on the basis of Ext.W2 letter dated 28.05.1998 issued by the Joint Secretary to the Government of India, Ministry of Surface Transport, Ports Wing, New Delhi whereby the age of retirement of the employees were raised from 58 to 60 years. Para 2 of that letter specifies that the increase in retirement age will be effective from the date of amendment of the Recruitment Rules/Regulations. Ext.W4 is the Circular dated 30.05.1998 issued by the Secretary, Cochin Port Trust intimating that the retirement age of the employees to be 60 years. On the basis of the aforesaid documents the retirement age of the employees working in the Cochin Port Trust was raised to 60 years.

44. Ext.W1 is the copy of The Cochin Port Employees (Retirement) Regulations, 1977 and it was published in the Gazette of India dated 10.06.1978. As per Ext.W1 the retirement age of every employee other than referred in clause (b) shall be 58 years. The said Regulation was amended consequent to Ext.W4 Circular dated 30.05.1998. Ext.W6 is the copy of the D.O. letter dated 17.04.2000 issued by the Joint Secretary, Government of India, Ministry of Surface Transport, New Delhi to the Chairman, Cochin Port Trust, Cochin requiring to recommend rolling back of retirement age of port employees and officers to 58 years as a first step towards the cutting down of excess manpower. Ext.W7 is the copy of D.O. letter dated 04.08.2000 issued by the Secretary, Government of India, Ministry of Surface Transport, Department of Shipping, New Delhi to the Chairman, Cochin Port Trust, Cochin requiring to place the matter of roll

back of retirement age before the Board and to take a decision to that effect. Ext.W9 is the copy of D.O. letter dated 18.09.2000 issued by the Joint Secretary, Government of India, Ministry of Surface Transport, Department of Shipping (Ports Wing), New Delhi to the Chairman, Cochin Port Trust, Cochin to get approval from the Board of Trustees of the Cochin Port Trust Board for rolling back of retirement age to 58 years. Ext.M6 is copy of the Agenda Item No.C-8 dated 24.03.2000 for consideration in the Board of Trustees meeting of Cochin Port Trust. In para 6 of Ext.M6 document it is noted as follows:-

*"It is observed that 229 employees are presently on the rolls of the Port who have crossed the age of 58 years and are due for retirement forthwith, if the amendment to lower the retirement age is introduced."*

In page No.8 of Ext.M6 document under para 76 it is noted as follows:-

*"After discussions, since no consensus was arrived at the Board decided to defer the matter to be placed in the newly constituted Board after seeing the response of some more Ports."*

Ext.M8 document reveals that the Cochin Port Trust Board deferred the decision to roll back the retirement age of employees. Ext.M9 is copy of the D.O. letter dated 18.09.2000 issued by the Joint Secretary, Government of India, Ministry of Surface Transport, Department of Shipping (Ports Wing), New Delhi to the Chairman, Cochin Port Trust, Cochin reiterating the need for rolling back the retirement age and requested to get the proposal approved by the Port Trust Board convening special meeting within a period of 15 days. On the basis of which Port Trust Board meeting was convened on 24.03.2000. Ext.M10 is the copy of the Agenda No.C-1 of the special meeting of the Board of Trustees of Cochin Port Trust. Para 14 in page No.7 in Ext.M10 reads as follows:-

*"14. After detailed discussions, subject to following conditions, Board resolved to approve the proposal to amend the Cochin Port Employees (Retirement) Regulations, 1977 as given in Appendix-I as per Section 28 of the MPT Act subject to further sanction of the Government under Section 124 ibid. The proposal would be made effective from 31.3.2001.*

*1. The Board resolved that in the case of employees retiring on 31.03.2001 consequent on the rolling back of retirement age to 58 years, they should be given the benefit of service for calculation of pension had the retirement age remained at 60 years.*

*2. The Board resolved that in case of ex-servicemen who are re-employed in the Port and who would have been eligible for minimum pension had the retirement age continued to be 60 years would be allowed notional period of service for computing retirement benefits to be eligible for minimum pension."*

Ext.M10 document and the decision of the Board as per the meeting dated 24.03.2000 reveal that the Board after discussions resolved to approve the proposal to amend The Cochin Port Employees (Retirement) Regulations, 1977 subject to further sanction of the Government of India under Section 124 of The Major Port Trusts Act, 1963. It is stated that the proposal would be made effective from 31.03.2001. Ext.M11 is the copy of the Gazette Notification dated 12.01.2001 as required under Section 124 read with Section 132 of The Major Port Trusts Act, 1963. As per Ext.M11 Gazette Notification the following changes were made in The Cochin Port Employees (Retirement) Regulations, 1977:-

*The Cochin Port Employees (Retirement) (Amendment) Regulations, 2001*

*Regulation 3*

*"3. Age of Retirement:*

- a. Except as otherwise provided in these Regulations, every employee other than those referred to in Clause (b) shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years.*
- b. A workman/an employee in Class IV service or post who entered Board's Service before 21-7-1972 shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years."*

45. On going through the Exts.M10 and M11 documents it can be seen that while publishing the decision of the Board in the Gazette; the beneficial provision enabling the affected workman to obtain the service benefits consequent on the rolling back of retirement age to 58 years was excluded. So also the enabling provision for minimum pension as per the decision of Port Trust Board was specifically excluded in the Gazette Notification. In short it can be seen that while publishing the amendment to The Cochin Port Employees (Retirement) Regulations, 1977, the enabling/beneficial provision for the employees who are affected by the rolling back of retirement age from 60 to 58 years was specifically excluded and thereby denying the workmen to get the benefits for which they are entitled as per the decision of the Cochin Port Trust Board. Therefore it is evident that while effecting the proposed amendment to

The Cochin Port Employees (Retirement) Regulations, the specific clause enabling the beneficial provision to the employees who are affected by the roll back of the retirement age was excluded.

46. The learned counsel for the union submitted that Ext.M11 Notification published was not in conformity with the decision of the Cochin Port Trust and as such it cannot be accepted as an amendment to the Regulations as required under law. The learned counsel also submitted that the amendment to the service condition was not in compliance with Section 9A of the Industrial Disputes Act. It is submitted that notice of the proposed amendment was not given to the unions and their objections in this regard were not considered before implementing the decision and as such there is violation of Section 9A and Section 33 of the Industrial Disputes Act. The learned counsel also submitted that as per Ext.W20 the Hon'ble High Court, in similar circumstance held that the decision to roll back retirement age from 60 to 58 years is unsustainable in law. Ext.W20 is copy of the Judgment dated 21.08.2012 in WP(C) No.2556/2009(D). The roll back of retirement age in the case of FACT employees was the matter for consideration in that Writ Petition. The Hon'ble High Court has observed that the unilateral decision to reduce the retirement age from 60 to 58 years is contrary to the settlements between the management and unions which are binding on both.

47. Ext.W16 is copy of the Minutes of Conciliation proceedings held before the Chief Labour Commissioner (Central), New Delhi camp at Mumbai on 07.07.2007. Ext.W16 document reveals that the conciliation proceedings as regards restoration of age from 60 to 58 years was adjourned. Ext.W17 is the letter dated 28.09.2007 issued by the Joint Secretary to the Government of India, Ministry of Shipping, Road Transport & Highways, Department of Shipping, New Delhi to the Chairmen, all major Port Trusts & Dock Labour Boards. Ext.W17 document reveals that the Government has decided to raise the retirement age of employees of the major Port Trusts and Dock Labour Boards to 60 years w.e.f.30.09.2007. It was made clear that the said decision has no retrospective effect. Therefore it is evident that with effect from 30.09.2007 the Government has decided to raise the retirement age of the employees to 60 years. It is evident that those who retired from service from 31.03.2001 to 29.09.2007 are the affected employees. As already stated the decision of the Cochin Port Trust Board as per Ext.M10 was to reduce the retirement age from 60 to 58 years w.e.f.31.03.2001. Even though Cochin Port Trust Board made some beneficial provisions enabling those who are affected by the roll back of retirement age, that portion was not published so as to have effect in the retirement benefits applicable to the affected workmen. In such circumstance there is no justifiability on the part of the management to reduce the retirement age to 58 years without providing any service benefit to those who are affected by this decision. It follows that the union involved in this reference is justified in raising the issue of roll back of retirement age of employees to 58 years and thereby denying them the service benefits. Therefore it is held that the decision of the management of the Cochin Port Trust in allowing its employees to retire at the age of 58 years during the pendency of conciliation and thereby denying the salary and other benefits is unjust and illegal.

48. The persons affected as per Ext.M10 decision of the management has already been retired from service. They have not worked /done any work as a result of the roll back of retirement age. Since they have not done any work as a result of the roll back of retirement age it will not be just and reasonable to grant them full salary and other benefits. Considering the facts and circumstances of the case and in view of the Ext.W20 document it is held that those who are retired between 31.03.2001 and 29.09.2007 as a result of the roll back of retirement age shall be eligible to get 30% of their salary. They are also entitled to get the benefits allowed by the Cochin Port Trust Board as per clause 1, 2 and 3 of Ext.M10 resolution. The points are answered accordingly.

49. Point No.(vii):- In view of the finding on Point Nos. (v) and (vi) an Award is passed as follows:

***“that the decision of the management of Cochin Port Trust in allowing to retire its employees at the age of 58 years as per Ext.M11 Gazette Notification is illegal and unjust. It is held that the workmen Who are retired from service as a result of the roll back from service during the period from 31.03.2001 to 29.09.2007, shall be entitled to get 30% of the salary to which they are eligible during the relevant period; that they should be given all service benefits for calculation of pension as if the retirement age remained at 60 years on the respective dates of their retirement. So also in the case of ex-servicemen who are employed, their retirement age be taken as 60 years and be allowed to notional period of service for computing the retirement benefits so as to entitle them for minimum pension”.***

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 30<sup>th</sup> day of November, 2016.

SASIDHARAN K., Presiding Officer

## APPENDIX

### Witnesses for the union

WW1	12.01.2015	Shri. K. Damodharan
WW2	11.05.2015	Shri. P. Gopalakrishna Pai

**Witnesses for the management**

MW1 29.02.2016 Shri. M. C. Jayandhan

**Exhibits for the union**

W1 - True copy of The Cochin Port Employees(Retirement) Regulations, 1977 published in the Gazette of India dated 10.06.1978.

W2 - True copy of the letter No.A-38011/5/98-PE.I dated 28.05.1998 issued by the Joint Secretary to the Govt. of India, Ministry of Surface Transport, Ports Wing, New Delhi to the Chairmen, All major Port Trusts and Dock Labour Boards.

W3 - True copy of the Office Memorandum No.25012/8/98-Estt.(A) dated 30.05.1998 issued by the Joint Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi – 110001.

W4 - True copy of the Circular No.P2/83/98/S dated 30.05.1998 issued by the Secretary, Secretary's Office, Cochin Port Trust, Cochin.

W5 - True copy of the Minutes of Proceedings of Meeting No.1 of 1998-1999 held on 05.06.1998 in the presence of Board of Trustees of the Cochin Port Trust.

W6 - True copy of the D.O. letter No.PR12016/12/2000-PE.I dated 17.04.2000 issued by the Joint Secretary, Ministry of Surface Transport, Government of India, New Delhi – 110001 to the Chairman, Cochin Port Trust, Willingdon Island, Cochin – 682009.

W7 - True copy of the D.O. letter No.PR-12016/18/2000-PE.I dated 04.08.2000 issued by the Secretary, Ministry of Surface Transport, Department of Shipping, Government of India, Transport Bhawan, Parliament Street, New Delhi – 110001 to Shri Thomas Jacob, Chairman, Cochin Port Trust, Willingdon Island, Cochin – 682009.

W8 - True copy of the letter No.DW/DTX-2/96-PD(T) dated 28.08.2000 issued by the Director (Designs), Ministry of Surface Transport, Government of India, Transport Bhawan, Parliament Street, New Delhi – 110001 to Shri Jacob Thomas, Chairman, Cochin Port Trust, Cochin.

W9 - True copy of the D.O. letter No.PR-12016/18/2000-PE.I dated 18.09.2000 issued by the Joint Secretary, Ministry of Surface Transport, Department of Shipping (Ports Wing), Government of India, New Delhi – 110001 to Dr. Jacob Thomas, Chairman, Cochin Port Trust, Cochin – 682009.

W10 - True copy of the Agenda Item No.C-1 to be discussed in the Special Meeting No.1 of 2000-2001 of the Board of Trustees to be held on 18.10.2000 under the Chairmanship of Dr. Jacob Thomas, Cochin Port Trust.

W11 - True copy of the representation letter No.CPSA/GL/2000 dated 01.11.2000 addressed to the Chairman, Cochin Port Trust by the General Secretary, The Cochin Port Staff Association, Willingdon Island, Kochi – 682009.

W12 - True copy of the letter No.2(15)/2000/D2 dated 08.11.2000 addressed to the Chairman, Cochin Port Trust, Cochin and the General Secretary, The Cochin Port Staff Association, W/Island, Kochi – 682009 by the Regional Labour Commissioner(C), Office of the Regional Labour Commissioner(C), Government of India, Ministry of Labour, 39/1329, Kalathiparambil Road, Ernakulam, Cochin – 682016.

W13 - True copy of the Minutes of the conciliation meeting held on 05.02.2001 before the Assistant Labour Commissioner (Central), Ernakulam between the management of Cochin Port Trust and Cochin Port Staff Association in file No.2(18)/2001/D2.

W14 - True copy of the Failure of Conciliation Report vide letter No.2(18)/2000/D2 dated 22.02.2001 addressed to the Secretary to Govt. of India, Ministry of Labour, New Delhi by the A.L.C(C), Office of the Regional Labour Commissioner (Central), Ministry of Labour, Government of India, 39/1329, Kalathiparambil Road, Ernakulam, Cochin – 16.

W15 - True copy of the forwarding letter No. NIL dated 08.09.2005 addressed to the Regional Labour Commissioner, (Head Quarters), Office of the Chief Labour Commissioner, Ministry of Labour, Rafi Marg, New Delhi – 110001 by the General Secretary, All India Port & Dock Workers Federation, CPSA Office, North End, Willingdon Island, Kochi – 682009.

W16 - True copy of the Minutes of the conciliation proceedings held on 07.07.2007 before the Chief Labour Commissioner(Central), New Delhi camp at Mumbai between all the major Ports and worker Federation.

W17 - True copy of the letter No.PR-12016/1/2006-PE-I dated 28.09.2007 addressed to the Chairman, All major Port Trusts and Dock Labour Boards by the Joint Secretary to the Govt. of India, Ministry of Shipping, Road Transport & Highways, Department of Shipping, Transport Bhawan, Government of India, Parliament Street, New Delhi – 110001.

W18 - True copy of the representation letter No.NIL dated 26.05.2008 addressed to the Assistant Labour Commissioner (Central), Kendriya Shram Sadan, Olimughal, Kakkanad, Ernakulam by the General Secretary, The Cochin Port Staff Association, Willingdon Island, Kochi – 682009.

W19 - True copy of the letter No.2/18/2008/D2 dated 14.05.2012 addressed to the Secretary to Govt. of India, Ministry of Labour and Employment, New Delhi by the Asst. Labour Commissioner (Central), Office of Regional Labour Commissioner (Central), Ministry of Labour & Employment, Government of India, Kendriya Shramadan, Olimughal, Kakkanad, Kochi – 682030.

W20 - True copy of the Judgment dated 21.08.2012 in WP(C) No.33938/2008 & 2556/2009 passed by the Hon'ble High Court of Kerala, Ernakulam.

**Exhibits for the management**

M1 - True copy of the letter No.L-35011/2/2001/IR(M) dated 04.05.2001 addressed to the Chairman, Cochin Port Trust, W/Island, Cochin – 682003 and the General Secretary, Cochin Port Employees Organisation, W/Island, Cochin – 9 by the Under Secretary, Ministry of Labour, Government of India, New Delhi.

M2 - True copy of the letter No.L-35011/3/2001/IR(M) dated 04.05.2001 addressed to the Chairman, Cochin Port Trust, W/Island, Cochin – 682003 and the General Secretary, Cochin Port Wharf Staff Association, W/Island, Cochin – 3 by the Under Secretary, Ministry of Labour, Government of India, New Delhi.

M3 - True copy of the Judgment dated 21.02.2007 in OP Nos.33685 & 34149 of 2000 and 8492 of 2001 passed by the Hon'ble High Court of Kerala, Ernakulam.

M4 - True copy of the letter No.A-38011/5/98-PE.I dated 28.05.1998 issued by the Joint Secretary to the Government of India, Ministry of Surface Transport, Ports Wing , New Delhi to the Chairmen, All major Port Trusts and Dock Labour Boards.

M5 - True copy of the Circular No.P2/83/98/S dated 30.05.1998 issued by the Secretary, Secretary's Office, Cochin Port Trust, Cochin.

M6 - True copy of the Agenda Item No.C-8 dated 24.03.2000 in the Board of Trustees Meeting for the year 1999-2000 of the Cochin Port Trust.

M7 - True copy of the D.O. letter No.PR12016/12/2000-PE.I dated 17.04.2000 issued by the Joint Secretary, Ministry of Surface Transport, Government of India, New Delhi – 110001 to the Chairman, Cochin Port Trust, Willingdon Island, Cochin – 682009.

M8 - True copy of the Agenda Item No.C-9 dated 30.08.2000 in the Board of Trustees Meeting for the year 2000-2001 of the Cochin Port Trust.

M9 - True copy of the D.O. letter No.PR-12016/18/2000-PE.I dated 18.09.2000 issued by the Joint Secretary, Ministry of Surface Transport, Department of Shipping (Ports Wing), Government of India, New Delhi – 110001 to Dr. Jacob Thomas, Chairman, Cochin Port Trust.

M10 - True copy of the Agenda Item No.C-1 dated 18.10.2000 in the Board of Trustees Meeting No.1 of 2000-2001 of the Cochin Port Trust.

M11 - True copy of the Gazette Notification No.22 – Part II Section 3 Sub-section (i) dated 12.01.2001

M12 - True copy of the letter No.P2/2000/S dated 03.02.2001 issued by the Chairman, Cochin Port Trust, Cochin to the Secretary to the Govt. of India, Ministry of Shipping, (Ports Wing) Transport Bhawan, New Delhi – 110001.

M13 - True copy of the Memorandum of Writ Petition (C) No. 21938/2013 dated 30.08.2013 filed under Article 226 of the Constitution of India before the Hon'ble High Court of Kerala, Ernakulam (Special Original Jurisdiction).

M14 - True copy of the Circular No. P2/2000/S dated 30.10.2000 issued by the Secretary, Secretary's Office, Cochin Port Trust, Cochin to all Heads of Departments/Heads of Offices.

M15 - True copy of the letter No. PR-12016/1/2006-PE-I dated 28.09.2007 issued by the Joint Secretary to the Govt. of India, Ministry of Shipping, Road Transport & Highways, Department of Shipping, Transport Bhawan, Government of India, Parliament Street, New Delhi – 110001 to the Chairman, All major Port Trusts and Dock Labour Boards.

नई दिल्ली, 11 जनवरी, 2017

**का.आ. 165.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (वाद सं. 114/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/430/1994-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th January, 2017

**S.O. 165.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Complaint No. 114/1995) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of ECL and their workmen, received by the Central Government on 11.01.2017.

[No. L-22012/430/1994-IR (C-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947.

#### Reference: No. 114/1995

Employer in relation to the management of Narsamuda Colliery, M/S ECL

AND

Their workman

**Present:** Shri R.K.Saran, Presiding Officer

#### Appearances:

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated- 21/11/2016

#### AWARD

By order No. L-22012/430/1994-IR(C-II) dated 02/02/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

**“Whether the action of the management of Narsamuda Colliery in dismissing Shri Santu Mudi w.e.f. 15/02/1992 is justified? If not to what relief is the workman entitled to ?”**

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 166.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 31/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 12th January, 2017

**S.O. 166.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 12.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 15<sup>th</sup> day of December, 2016

#### INDUSTRIAL DISPUTE L.C.No. 31/2008

##### Between :

Sri Ambala Prabhakar,  
S/o Chandraiah,  
C/o Smt. A. Sarojana,  
Advocate, Flat No. G7,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad

...Petitioner

##### AND

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Mandamarri Area, Mandamarri,  
Adilabad District
2. The Superintendent of Mines,  
7(L.E.) P, M/s. Singareni Collieries Company Ltd.,  
Godavarikhani, Adilabad District

...Respondents

##### Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri M.V. Hanumantha Rao, Advocate

## AWARD

Sri Ambala Prabhakar who worked as Coal filler (who will be referred to as the workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Singareni Collieries Company Ltd., seeking for declaring proceeding No. P.RG.I/32/2609, dated 19.6.1997/03.7.1997 issued by Respondent No.1 as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

**2. The averments made in the petition in brief are as follows:**

The Petitioner was appointed as badli filler on 1.4.1987 and later he was confirmed as Coal Filler. The Petitioner was regular to his duties till the year 1994. But during the year 1995, the Petitioner suffered with several ailments including gout, jaundice and other family problems. While the matters stood thus, charge sheet dated 29.3.1996 was issued to him by the Respondents alleging that the Petitioner absented for duty during the year 1995, which amounts to misconduct under company's Standing Order No. 25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Petitioner was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Petitioner was dismissed from service vide order No. P.RG.I/32/2609, dated 19.6.1997/03.7.1997. It is stated that during the course of the enquiry the Petitioner has categorically stated that his inability to perform his duties regularly during the year 1995 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Petitioner was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Petitioner from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Petitioner has rendered several years of continuous service in the Respondents' management. The Petitioner approached the Respondents to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Petitioner was constrained to approach this Tribunal to declare the impugned order No. P.RG.I/32/2609, dated 19.6.1997/03.7.1997 issued by the Respondents is illegal and arbitrary and to set aside the same and consequently to direct the Respondents to reinstate the Petitioner into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondents filed counter denying the averments made in the claim petition, with the averments in brief which runs as follows:**

In the counter the Respondents while admitting some of the factual aspects to be true, stated that the Petitioner was appointed in the Respondent's company on 2.4.1987 as Badli Filler and he was regularised as Coal filler on 1.1.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Petitioner has attended the enquiry on the date fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Petitioner was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Petitioner by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Petitioner is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Petitioner from service. It is stated that in fact the Petitioner was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Petitioner is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Petitioner admitting the validity of the domestic enquiry to be legal and valid, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 1.7.2009.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of dismissal from service to Sri Ambala Prabhakar is legal and justified?
- II. Whether the Petitioner is entitled for reinstatement into service?
- III. If not, to what other relief he is entitled?

7. **Point No. I:** During the course of argument, the Learned Counsel appearing on behalf of the Petitioner submitted that due to illness, the Petitioner could not be able to attend his duty sincerely. Even in his show cause the Petitioner has mentioned the above fact but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Petitioner. When the Petitioner has taken a stand that due to his illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority has given capital punishment to the Petitioner when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondents submitted that when the Petitioner was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondents' company is legal and proper. When the Petitioner was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness the Petitioner could not be able to be regular in his duty, he has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Petitioner were proved. For this, capital punishment was imposed. After dismissal of service, the Petitioner has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court at the age of 40 years, he is now aged about 48 years and is searching ways and means to provide bread and butter to his family members. When the Petitioner being an able bodied and energetic man has already realised his mistake and is coming forward to work, atleast one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondents for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Ambala Prabhakar is not legal and justified.

Thus, Point No. I is answered accordingly.

10. **Point Nos. II & III:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Ambala Prabhakar is not legal and justified. After dismissal of service as stated earlier, when the Petitioner has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Petitioner has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Petitioner should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Petitioner has not come to the court soon after his dismissal from service. In the opinion of this Tribunal the Petitioner is not entitled to get all the relief as claimed in his claim petition. But he is entitled to be given atleast a chance to work in the Respondents' management.

Thus, Point Nos. II & III are answered accordingly.

#### ORDER

Proceeding No. P.RG.I/32/2609, dated 19.6.1997/03.7.1997 is declared as illegal and is hereby set aside. It is ordered that the workman Sri Ambala Prabhakar be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to either maintain minimum mandatory 20 musters every month or 190 musters in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 15<sup>th</sup> day of December, 2016.

MURALIDHAR PRADHAN, Presiding Officer

**Appendix of evidence**

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 167.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 245/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/74/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 12th January, 2017

**S.O. 167.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 245/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 12.01.2017.

[No. L-22012/74/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 14<sup>th</sup> day of December, 2016**INDUSTRIAL DISPUTE L.C.No. 245/2014****Between :**

The Dy. General Secretary,  
(Sri M. Dayakar Reddy),  
Singareni Collieries Workers Union (AITUC),  
Godavarikhani-505209.  
Karimnagar District

...Petitioner Union

**AND**

The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Ramagundam – I Area, Godavarikhani-505209.  
Karimnagar District

...Respondent

**Appearances:**

For the Petitioner : None

For the Respondent : Sri V.S.V.S.R.K.S. Prasad, Advocate

**AWARD**

The Government of India, Ministry of Labour by its order No. L-22012/74/2014-IR(CM-II) dated 25.11.2014 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

## SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area, Godavarkhani disallowing the seniority lined upgradation w.e.f. 1.1.2004 and allowing seniority linked promotion w.e.f. 1.1.2013 instead of 1.1.2012 is justified or not? If not, to what relief the applicant is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 245/2014 and notices were issued to the parties concerned.

2. The case is posted for filing of claim statement by the Petitioner union but, inspite of availing several opportunities, the Petitioner union remained absent and there is no representation on behalf of the Petitioner union which clearly indicates that perhaps the dispute of the Petitioner union has already been settled. In the circumstances stated above, it is felt that the Petitioner union is not interested in pursuing the dispute. Thus, ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P Phani Gowri, Personal Assistant and corrected by me on this the 14th day of December, 2016.

MURALIDHAR PRADHAN, Presiding Officer

### Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

### Documents marked for the Petitioner

NIL

### Documents marked for the Respondent

NIL

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 168.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 107/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/31/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 12th January, 2017

**S.O. 168.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 107/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 12.01.2017.

[No. L-22012/31/2014-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated the 3<sup>rd</sup> day of November, 2016

**INDUSTRIAL DISPUTE L.C.No. 107/2014**

**Between :**

The President,  
(Sri Bandari LIngaiah),  
Singareni Collieries Employees Union (CITU),  
Qr.No. 139-T, Cornor Colony,  
Somagudem (via) Bella  
Adilabad – 504251

...Petitioner Union

**AND**

The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Mandamarri Area, Mandamarri (P.O.)-504231  
Adilabad

...Respondent

**Appearances :**

For the Petitioner : None  
For the Respondent : Legal Representative

**AWARD**

The Government of India, Ministry of Labour by its order No. L-22012/31/2014-IR(CM-II) dated 22.5.2014 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

**SCHEDULE**

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Area Dist., designating Sri Kumbala Laxmaiah, Ex-Bit Sharpner Category-V as General Mazadoor with Category-I wages without protecting wages in Cat.V with effect from 21.5.2007 is justified or not? If not, to what relief the worker is entitled for?”

The reference is numbered in this Tribunal as I.D. No. 107/2014 and notices were issued to the parties concerned.

2. The case is posted for filing of claim statement of the Petitioner union. Inspite of availing several opportunities, the Petitioner union and the Respondent remained absent and there was no representation on behalf of the Petitioner union which clearly indicates that perhaps the dispute of the Petitioner union has already been settled. In the circumstances stated above, it is felt that the Petitioner union is not interested in pursuing the dispute. Thus, ‘No dispute’ award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

**Appendix of evidence**

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 169.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक

अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 53/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/277/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 12th January, 2017

**S.O. 169.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 12.01.2017.

[No. L-22012/277/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated the 9<sup>th</sup> day of November, 2016

#### INDUSTRIAL DISPUTE L.C.No. 53/2005

#### Between :

The General Secretary,  
(Sri Bandari Satyanarayana),  
Singareni Collieries Employees Council(TNTUC),  
BCH 30, Vittal Nagar,  
Godavarikhani – 505209

...Petitioner/Union

#### AND

The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Bhupalapalli Division,  
Bhupalapalli-506168

...Respondent

#### Appearances :

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

#### AWARD

The Government of India, Ministry of Labour by its order No. L-22012/277/2004-IR(CM-II) dated 12.7.2005 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

#### SCHEDEULE

“Whether the demand of Singareni Collieries Employees Council for reinstatement of Sri Uppari Prabhakar, Coal Filler, KTK-5 Inc., Bhupalapalli Division into the services of Singareni Collieries Company Ltd., is legal and/or justified? If so, to what relief the workman is entitled?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 53/2005 and issued notices to both the Petitioner union and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

#### 2. The averments made in the claim statement in brief are as follows:

Sri Uppari Prabhakar, was appointed as badli filler on 14.3.1988 and later he was confirmed as Coal Filler on 1.4.1995. The Workman was regular to his duties till the year 1996. But during the year 1996, the Workman suffered with illness and family problems. While the matters stood thus, charge sheet dated 14.7.1997 was issued to him by the

Respondent management alleging that the Workman absented for duty during the year 1996 without sufficient cause, which amounts to misconduct under company's Standing Order No.25.25. Subsequently, one inquiry was conducted and during the time of the enquiry, the Workman was not given any opportunity much less valid in nature to put forth his grievances. Basing on such lopsided enquiry, the Enquiry Officer held the charges as proved and basing on the erroneous findings of the Enquiry Officer, the Workman was dismissed from service vide order No. P.10/4202/IR/2005 dated 16.11.1998. It is stated that during the course of the enquiry the Workman has categorically stated that his inability to perform his duties regularly during the year 1996 was only on account of his ill-health and other family problems. But without considering any of his submissions, the Workman was dismissed from service. It is also stated that the action of the Respondents management in dismissing the Workman from service is wholly illegal, arbitrary, violative of the principles of natural justice. The Workman has rendered several years of continuous service in the Respondent management. The Workman approached the Respondent to consider his case sympathetically, but the management did not pay any heed to it. Therefore, the Workman was constrained to approach this Tribunal through Petitioner Union to declare the impugned order No. P.10/4202/IR/2005 dated 16.11.1998 issued by the Respondent is illegal and arbitrary and to set aside the same and consequently to direct the Respondent to reinstate the Workman into service duly granting all other attendant benefits such as continuity of service, back wages etc..

**3. The Respondent filed counter denying the averments made in the petition, with averments in brief as follows:**

In the counter the Respondent while admitting some of the factual aspects to be true, stated that the Petitioner Workman was appointed in the Respondent's company on 14.3.1988 as Badli Filler and he was regularised as Coal filler on 1.9.1995. He was dismissed from service on proved charges of absenteeism, after conducting a detailed domestic enquiry duly following the principles of natural justice. The Workman has attended the enquiry fixed and had fully participated in the enquiry. He was given full, fair and reasonable opportunity to defend himself in the enquiry. The enquiry was conducted purely following the principles of natural justice. It is stated that basing on the evidence adduced before the Enquiry Officer, the Enquiry Officer submitted his report holding the charges levelled against the Workman was proved. A copy of the enquiry report and the enquiry proceeding was sent to the Workman by way of show cause notice giving him an opportunity to make representation against the findings of the enquiry report; since the charge levelled against the Workman is proved and it was serious in nature, punishment warranted was dismissal from service. The Disciplinary Authority has gone through the enquiry proceeding and his past record and found that there was no extenuating circumstances to take a lenient view and lastly, the Respondent was constrained to dismiss the Workman from service. It is stated that in fact the Workman was irregular to his duties and he did not improve his attendance even after issuing charge sheet to him, and after receiving the show cause notice. It is further stated that the punishment imposed on the Workman is justified and legal and as such the claim petition is liable to be dismissed in limini.

4. In view of the memo filed by the Learned Counsel for the Workman admitting the validity of the domestic enquiry to be legal and valid, the domestic enquiry conducted in the present case is held as legal and valid vide order dated 27.1.2014.

5. Both the parties have advanced their arguments under Sec.11(A) of the Industrial Disputes Act, 1947, in support of their claim.

**6. In view of the above facts, the points for determination are:**

- I. Whether the demand of Singareni Collieries Employees Council for reinstatement of Sri Uppari Prabhakar, Coal Filler, KTK-5 Incl., Bhupalapalli Division into the services of Singareni Collieries Company Ltd., is legal and justified?
- II. If so, to what relief the Workman is entitled?

7. **Point No.I:** During the course of argument, the Learned Counsel appearing on behalf of the Workman submitted that due to illness, and family problems the Workman could not be able to attend his duty sincerely. Even in his show cause the Workman has mentioned the above facts but it has not been considered during the course of the enquiry and on account of absenteeism capital punishment of dismissal from service was imposed on the Workman. When the Workman has taken a stand that due to his illness he could not be able to attend his duties regularly and remained absent, the authority should have considered his case while imposing punishment. But, the authority has given capital punishment to the Workman when several modes of punishment are enumerated in the company's Standing Orders.

8. On the other hand, the Learned Counsel appearing on behalf of the Respondent submitted that when the Workman was a chronic absentee and was found guilty in the charges levelled against him, the punishment imposed by the Respondent company is legal and proper. When the Workman was not sincere in his duty and failed to maintain minimum musters in a year he is not entitled to be reinstated in service.

9. Admittedly, working in the Mines is hazardous and remaining absent is not unusual. In this case, due to his illness and some family problems, the Workman could not be able to be regular in his duty, the Workman has remained absent in his duties and a proceeding was initiated against him for his absenteeism followed by an enquiry. In the enquiry, the charges levelled against the Workman were proved. For this, capital punishment was imposed. After dismissal of service, the Workman has become jobless and unable to provide a square meal to his family members. He has already realised his mistake and has taken shelter in the court and is searching ways and means to provide bread and butter to his family members. When the Workman has already realised his mistake and is coming forward to work, atleast one chance should be given to him for reinstatement into service. While imposing capital punishment to his employees, the management should think of the condition of the workers as well as his family members. In this case, the punishment imposed by the Respondent for dismissal of service is too harsh. Therefore, it can safely be stated that the action taken by the management in imposing the punishment of dismissal from service to Sri Uppari Prabhakar is not legal and justified.

Thus, Point No.I is answered accordingly.

10. **Point No. II:** In Point No.I, it has already been discussed that the punishment of dismissal from service to Sri Uppari Prabhakar is not legal and justified. After dismissal of service as stated earlier, when the Workman has already realised his mistake and has come to the court with a prayer for reinstatement into service he should be given a chance to serve for his family members. After dismissal of service the Workman has become jobless and he being the sole bread earner of his family, is unable to provide a square meal to his family members. In such a circumstances atleast the Workman should be given a chance to maintain his livelihood and to work under the Respondent's management. But in this case, the Workman has not come to the court soon after his dismissal of service. In the opinion of this Tribunal the Workman is not entitled to get all the relief as claimed in the claim statement by the Petitioner union. But he is only entitled to be given a chance to work in the Respondent's management.

Thus, Point No. II is answered accordingly.

#### **Result:**

In the result, the reference is ordered as under:

"The demand of Singareni Collieries Employees Council for reinstatement of Sri Uppari Prabhakar, Coal Filler, KTK-5 Incl., Bhupalapalli Division into the services of Singareni Collieries Company Ltd., is legal and justified".

It is ordered that the workman Sri Uppari Prabhakar be taken into service as a fresh employee i.e., Badli filler in Cat.I, on initial basic pay without back wages and continuity of service, subject to medical fitness by the company Medical Board and the workman be kept under probation for a period of one year. The management is also directed to take an undertaking of good behaviour from the workman at the time of his posting.

The Workman can not claim for his posting in the same place, where he was last employed. The workman shall have to maintain either minimum mandatory 20 musters every month or 190 days in a year and the management shall have the right to review the work of the workman in every three months. In the event of any short fall of attendance during the period of the three months, the service of the workman will not be terminated and he will be cautioned to improve his performance by issuing him a warning letter. However, in the event of any shortfall of attendance during one year of service of the workman, he will be terminated from service without any further notice and enquiry. The management shall consider any forced absenteeism on account of Mine accidents/ Natural disasters, taking treatment in the company's hospital, as attendance. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc.. to the workman for appointment afresh.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 9<sup>th</sup> day of November, 2016.

MURALIDHAR PRADHAN, Presiding Officer

#### **Appendix of evidence**

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

#### **Documents marked for the Petitioner**

NIL

#### **Documents marked for the Respondent**

NIL

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 170.**—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 810/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[ सं. एल-30011/65/2003-आईआर (एम) ]

राजेश कुमार, अवर सचिव

New Delhi, the 12th January, 2017

**S.O. 170.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 810/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 12.01.2017.

[No. L-30011/65/2003-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 26<sup>th</sup> December, 2016

##### Reference: (CGITA) No. 810/2004

1. The Group General Manager,  
ONGC Ltd., I.R. Department, Ankleshwar Asset, Distt.- Bharuch,  
Ankleshwar (Gujarat) - 393010
2. M/s. New Industrial Security Services,  
103, 113 Omkar Chambers, 1<sup>st</sup> Floor, Opp. Railway Station,  
Surat (Gujarat) – 395003
3. M/s. Central Investigation & Security Services,  
Flat No. 002, Ground Floor, Parasrampura Tower No. 6,  
Mumbai – 400053
4. M/s. Industrial Security Services,  
1<sup>st</sup> Floor, Opp. Jagadamba Mills, A.K. Road,  
Surat (Gujarat) – 395003 ...First Party

##### V/s

The General Secretary,  
ONG Mazdoor Sangh, C/o Union Office, Workshop Complex, Ankleshwar,  
Distt. Bharuch (Gujarat) – 393001 ...Second Party

For the First Party : C.S. Naidu Associates  
For the Second Party : R.H. Pathan

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/65/2003-IR(M) dated 27.08.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

## SCHEDULE

“Whether the demand of the All Gujarat State Kamdar General Union, Keshwan, Distt. Bharuch for regularization of Sh. Chimanbhai K. Vasava & 34 other security guards as mentioned in Annexure ‘A’ by the management of ONGC Ltd., Ankleshwar is proper and justified? If so what relief the concerned workers are entitled for and since when?”

1. The reference dates back to 27.08.2003. After issuing the notice to the parties, the second party union did not prefer the statement of claim. Similarly the first party also not submitted the written statement however the General Secretary of ONG Mazdoor Sangh moved an application Ext. 4 for withdrawal and deletion of names of 25 workmen listed below:

- i. Chiman K. Vasava
- ii. Rameshbhai F. Parmar
- iii. Parmar Navghanbhai Jagmalbhai
- iv. Parmar Mansukh Chhtubhai
- v. Solanki Fatesang Mansang Solanki Dashrathbhai
- vi. Mahujibhai
- vii. Nagjibhai Ramsangbhai Vaghela
- viii. Sabir Ali A. Sayyed
- ix. Ishwar Laxman Makwana
- x. Arjunbhai Pratapbhai Padhiyar
- xi. Ajaykumar Fatesang Solanki
- xii. Natwar D. Gohil
- xiii. Suresh L. Patel
- xiv. Shantilal S. Parmar
- xv. Ganpatbhai K. Rohit
- xvi. Thakor P. Vasava
- xvii. Bharat S. Solanki
- xviii. Vankar Manubhai Jagmalbhai
- xix. Gfatesang Rayjibhai Parmar
- xx. Vankar Manilal Muljibhai
- xxi. Manharbhai Himmatbhai Vasava
- xxii. Gambhir Jagmal Parmar
- xxiii. Rohit Vasantbhai Babubhai
- xxiv. Ambubhai Prabhatbhai Patel
- xxv. Rohit Jayntibhai Babubhai

from the reference, same was allowed vide order Ext. 4 on 05.11.2015 and reference was listed for 23.12.2015 for submitting the statement of claim by the rest of the workmen. But despite service the statement of claim was not submitted even after one year. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of with the observation as under: “the demand of the All Gujarat State Kamdar General Union, Keshwan, Distt. Bharuch for regularization of Sh. Chimanbhai K. Vasava & 34 other security guards as mentioned in Annexure ‘A’ by the management of ONGC Ltd., Ankleshwar is not proper and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 171.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डस्ट्रीयल सिक्यूरिटी सर्विसेज एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 18/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[ सं. एल-30011/76/2004-आईआर (एम) ]

राजेश कुमार, अवर सचिव

New Delhi, the 12th January, 2017

**S.O. 171.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2005) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Industrial Security Services and others and their workman, which was received by the Central Government on 12.01.2017.

[No. L-30011/76/2004-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 26<sup>th</sup> December, 2016

**Reference: (CGITA) No. 18/2005**

1. The Managing Director,  
Industrial Security Services, 8, Parichay Shopping Centre,  
Ahmedabad (Gujarat) – 380001
2. The Chief Manager (Security),  
ONGC Ltd., Ahmedabad Project, 5<sup>th</sup> Floor, Avani Bhavan,  
Chandkheda, Ahmedabad (Gujarat)
3. The Executive Director,  
ONGC Ltd., 5<sup>th</sup> Floor, Avani Bhavan,  
Chandkheda, Ahmedabad (Gujarat)

...First Party

**V/s**

The General Secretary,  
Gujarat Petroleum Employees Union,  
434/46, Gandhivas Naka, Gujarat Stadium Circle, Sabarmati,  
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party : Shri K.V. Gadlia  
For the Second Party : Kum. Santoshben

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/76/2004-IR(M) dated 20.01.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDEULE

“Whether the labourers as per Annexure ‘Q’ engaged by the contractor M/s Industrial Security Services, can be said to be workmen of ONGC Ltd.? If yes, to what relief these labourers are entitled and from which date?”

1. The reference dates back to 20.01.2005. The second party did not prefer to submit the statement of claim; therefore, a fresh notice Ext. 5 was issued to both the parties to appear on 09.06.2011, consequently the workmen 46 in number mentioned in the withdrawal application Ext. 9 moved for withdrawal of the reference. Therefore, my predecessor Shri B.K. Sinha passed the order Ext. 10 allowing the application and granted time to rest of the workmen to submit the statement of claim by 06.03.2013 but neither of the workmen submitted the statement of claim. However Petroleum Mazdoor Sangh moved an application Ext. 13 on behalf of 5 workmen for withdrawal but they did not appear in person.

2. Thus it appears that the rest of the workmen are not willing to prosecute the reference. Therefore, the reference is finally disposed of with the observation that the remaining workmen may also be given the same relief as given to the workmen vide aforementioned order Ext. 10 dated 05.02.2013.

3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 172.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 120/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-30011/25/2006-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 12th January, 2017

**S.O. 172.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 120/2006) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 12.01.2017.

[No. L-30011/25/2006-IR (M)]

RAJESH KUMAR, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 26<sup>th</sup> December, 2016

##### Reference: (CGITA) No. 120/2006

1. M/s Public Power Mazdoor Kamdar Sahakari Mandli Ltd.,  
Opp. Dudhsagar Dairy, White House, Highway Road,  
Mehsana (Gujarat) – 384002
2. The Chairman-cum-Managing Director,  
ONGC, Tel. Bhavan,  
Dehradun – 248001
3. The Group General Manager-Asset Manager,  
ONGC Ltd., Mehsana Project, Palavasana,  
KDM Bhavan, Palavasna,  
Mehsana (Gujarat) – 384002

4. M/s Adarsh Majdoor Sahakari Mandli Ltd.,  
Near Gayatri Mandir, Highway Road,  
Mehsana (Gujarat) – 384002
5. M/s Swastik Mazdoor Kamgar Sahakari Mandli Ltd.,  
Sardar Shopping Centre, Near Congress House,  
Mehsana (Gujarat) – 384001
6. Chansma Taluka Sarvodaya Majdoor Sahakari Mandli,  
Urmi Shopping Center, New B.K. Cinema, S.T. Workshop Road,  
Mehsana (Gujarat)
7. The Executive Director (RM),  
ONGC, WRBC, Makarpura Road, Head Reg. Off.,  
Baroda (Gujarat) – 390009
8. M/s B.S. Choudhary & Co.,  
Punjab Colddrinks, 7, Urmi Shopping Centre, S.T. Workshop Road,  
Mehsana (Gujarat) – 384002
9. M/s Mehsana Taluka Sahakari Mandli Ltd.,  
Mehsana, C/o ONGC Ltd.,  
Mehsana (Gujarat)
10. Ekta Mazdoor Contractor Sahakari Mandli Ltd.,  
Ram Krishna Vastar Bhandar, Dairy Road,  
Mehsana (Gujarat)
11. M/s Umiya Mazdoor Sahakari Mandli C/o ONGC Ltd.,  
Mehsana (Gujarat)
12. M/s Tripada Mazdoor Kamdar Sahakari Mandli Ltd.,  
GIDC, Mehsana (Gujarat)
13. M/s Dalit Kamdar Vivid Karya Mazdoor Kamdar Mandli Ltd.,  
Ambedkar Chowk, Kasbha, Mehsana (Gujarat)
14. M/s Modern Manpower Vehicle & Machinery Equipment Suppliers  
Mazdoor Kamdar Sahakari Mandli Ltd., C/o Sh. M.D. Parmar, Secy.,  
At & PO Palodar, Taluka & Distt. Mehsana (Gujarat) – 384206
15. Jaibharat Mazdoor Kamdar Sahakari Mandli Ltd.,  
A.K. Nagar, Somnath Mandar Road,  
Mehsana (Gujarat)
16. M/s Diwanpura Mazdoor Kamdar Sahakari Mandli Ltd.,  
Village Diwan Para, Tal and Distt. Mehsana (Gujarat)
17. M/s Visnagar Vibhagya Rohit Kamdar Mandli Ltd.,  
Village Kamana, Visanagar, Mehsana (Gujarat)
18. M/s Multipurpose Management Services Pvt. Ltd.,  
White Hall, Opp. Dudhsagar Dairy,  
Mehsana (Gujarat) ...First Party

**V/s**

The Secretary,  
ONGC Labour Union,  
8, Samarpan Shopping Complex,  
Highway Road,  
Mehsana (Gujarat)

...Second Party

For the First Party : Shri K.V. Gadlia

For the Second Party : Shri A.S. Kapoor

## AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/25/2006-IR(M) dated 10.05.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

## SCHEDULE

“Whether the action of the management of ONGC by not regularising 46 contract labours from their initial date of appointment as per Annexure ‘Q’ is legal and justified? If not what relief the workmen are entitled to and to what extent?”

1. The reference dates back to 10.05.2006. The second party workman submitted the statement of claim Ext. 4 on 28.06.2006 and the first party submitted the written statement Ext. 15 on 18.09.2008. The second party also moved an application Ext. 6 for interim relief on 26.06.2006 and also the application of production of documents Ext. 18 by the first party on 30.01.2009 but since then the second party did not appear to prosecute the case and for disposal for the application Ext. 6 and Ext. 18 despite the fact that his advocate generally comes in the court. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of with the observation as under: “the action of the management of ONGC by not regularising 46 contract labours from their initial date of appointment as per Annexure ‘Q’ is legal and justified and the applications Ext. 6 and 18 are also rejected as not being pressed by the second party for want of appearance.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 173.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आई.ओ.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 65/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-30011/16/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 12th January, 2017

**S.O. 173.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2007) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. I.O.C. Ltd. and others and their workman, which was received by the Central Government on 12.01.2017.

[No. L-30011/16/2007-IR (M)]

RAJESH KUMAR, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 26<sup>th</sup> December, 2016

**Reference: (CGITA) No. 65/2007**

The Executive Director,  
Gujarat Refinery, IOC Ltd., P.O. Jawaharnagar,  
Baroda (Gujarat)

...First Party

V/s

The General Secretary,  
Gujarat Refinery Majdoor Sangh,  
B-20, Kalyan Nagar, ITI Road, Tarsali,  
Baroda (Gujarat)

...Second Party

For the First Party :

For the Second Party : Shri Sudhir J. Shah

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/16/2007-IR(M) dated 09.07.2007 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDELE

“Whether Gujarat Refinery Mazdoor Sangh, union has locus-standing to represent Shri H.M. Patel & 10 others to raise industrial dispute and represent under Section 36 of the I.D. Act, 1947? If so, ‘Whether the demand of the union that the pay anomalies of S/Shri (1) H.M. Patel (2) N.J. Bhatt (3) R.M. Makwana (4) I.F. Patel (5) C.M. Chauhan (6) J.G. Thanki (7) S.G. Gohil (8) K.P. Mehta (9) R.B. Patel (10) U.M. Gohil and (11) C.B. Vaghela with their juniors is legal, proper and just? If so, to what relief the concerned workmen are entitled to?”

1. The reference dates back to 09.07.2007. The second party submitted the statement of claim Ext. 5 on 29.07.2008 and the first party submitted the objection Ext. 8 regarding the maintainability of the reference. The second party also submitted the reply Ext. 10 to the application Ext. 9 regarding maintainability of the reference. But later both the parties agreed to lead evidence and the second party was also examined on Ext. 12 but thereafter he did not appear for cross-examination. Therefore, on 10.01.2011, on receiving the record from the State Industrial Tribunal Central, fresh notice was issued to parties to appear on 13.03.2011 but neither of the parties appeared till date. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of with the observation as under: “Gujarat Refinery Mazdoor Sangh, union has no locus-standing to represent Shri H.M. Patel & 10 others to raise industrial dispute and represent under Section 36 of the I.D. Act, 1947 and the demand of the union that the pay anomalies of S/Shri (1) H.M. Patel (2) N.J. Bhatt (3) R.M. Makwana (4) I.F. Patel (5) C.M. Chauhan (6) J.G. Thanki (7) S.G. Gohil (8) K.P. Mehta (9) R.B. Patel (10) U.M. Gohil and (11) C.B. Vaghela with their juniors is not legal, proper and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 12 जनवरी, 2017

**का.आ. 174.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधतंत्र के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 15/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.01.2017 को प्राप्त हुआ था।

[सं. एल-30025/1/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 12th January, 2017

**S.O. 174.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2016) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and others and their workman, which was received by the Central Government on 12.01.2017.

[No. L-30025/1/2017-IR (M)]

RAJESH KUMAR, Under Secy.

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD

## Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 19<sup>th</sup> December, 2016

**Reference: (CGITA) No. 15/2016**

1. The Manager (HR),  
ONGC Ltd., Avani Bhavan, Chandkheda,  
Ahmedabad (Gujarat) – 382424
2. M/s Shree Ganesh Caterers,  
A/403, Shukan Apartment,  
Opp. Sahajanand Complex,  
New C.G. Road, Chandkheda,  
Ahmedabad (Gujarat) – 382424 ...First Party

V/s

Rajesh Kumar Harsh Narayan Jha

And

Mahendra Ram Arya,  
Through : Glorious Petroleum Mazdoor Sangh,  
A/3, Priya Darshini Society,  
Near New Railway Colony,  
Sabarmati,  
Ahmedabad (Gujarat) – 380019 ...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party :

## AWARD

The Government of India/Ministry of Labour, Office of the Dy. Chief Labour Commissioner (Central), Ahmedabad by Order No. ALC/ADI/5(44)/2015 dated 28.09.2015 referred the dispute for adjudication and the second party/workmen directly filed the matter to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified below:

“This is to certify that Shri Rajesh Kumar & Mahendraram Arya, Contract Labour under Contractor, M/s Ganesh Caterers, Ahmedabad at Manager – HR, ONGC Ltd; Ahmedabad through union, President, Glorious Petroleum Mazdoor Sangh, Ahmedabad filed an Industrial Dispute under Section 2 A of the Industrial Disputes (Amendment) Act, 2010 before the Assistant Labour Commissioner (Central), Ahmedabad, Consequent upon their termination from the service of the M/s Ganesh Caterers, Ahmedabad at Manager-HR, ONGC Ltd., Ahmedabad.”

1. The reference dates back to 04.02.2016. This reference has arisen out of a statement of claim Ext. 1 directly filed by the second party Rajesh Kumar Harsh Narayan Jha and Mahendra Ram Arya after issuance of a certificate of conciliation officer issued under Section 2 A of the Industrial Disputes Act, 1947.

2. Both the workmen in the statement of claim Ext. 1 have stated that they had been working in the canteen situated in the premises of the first party no. 1 ONGC. The ONGC established ONGC Consumer Co-operative Society for running the said canteen, controlled and managed by first party no. 2 M/s Shree Ganesh Caterers wherein they had been working as permanent workmen i.e. waiter and ONGC was having the full control over the canteen. The Consumer Co-operative Society went into liquidation; therefore, later it was controlled, supervised and managed by the ONGC. ONGC was under a duty to run and manage the canteen for the benefit of the workmen under the statutory provisions of the factories act to increase the competence and working capability of the workman. The ONGC had entered into a contract with the M/s Shree Ganesh Caterers to run the canteen with a condition to maintain quantity and quality of the food and to initiate action against the contractors in case of violation of any conditions. They have further alleged that during the entire period of service, there was not a single complaint of misconduct or discipline against them. They work for more than 240 days in each and every calendar year on a fix daily wages of Rs. 347/- but without showing any

reason, both were discharged from the job on 01.12.2014 and 30.12.2014 respectively without showing any reason or notice or also without paying any retrenchment compensation and the action was also taken in violation of Section 25 F G H of the Industrial Disputes Act. Thus they have prayed for reinstatement with full back wages with Rs.25000/- as legal expenses.

3. On issuance of notice, the first party no. 1 ONGC submitted the written statement Ext. 8 on 21.09.2016 submitting that the tribunal has no jurisdiction to entertain the reference being non-maintainable and bad in law as there was no master servant relationship with the workmen because the workmen have not filed any documents of evidence showing them as working with the canteen run by ONGC Consumer Co-operative Society. It is true that the canteen is run by the aforesaid society but not by the ONGC itself. Therefore, ONGC is not under any legal obligation to reinstate them with back wages. But it has not been disputed that the first party no. 2 Shree Ganesh Caterers was not granted contract to run the aforesaid canteen.

4. The first party no. 2 Shree Ganesh Caterers despite service of notice did not prefer to submit the written statement. Therefore, the reference was taken up ex parte against him.

5. The workmen Rajesh Kumar Harsh Narayan Jha and Mahendra Ram Arya submitted their affidavit Ext. 9 and 10 respectively. They reiterated the averments made in the statement of claim Ext. 1 proving that they work for years for more than 240 days in each and every calendar year as waiter in the aforesaid canteen run by ONGC Consumer Co-operative Society and managed and controlled by first party no. 2 Shree Ganesh Caterers and the first party no. 2 has not disputed the fact by way of filing written statement or evidence however the first party no. 1 ONGC has cross-examined them which establishes that these workmen were not the employee of the ONGC but it is not disputed that they were not the workmen of first party no. 2 Shree Ganesh Caterers. Thus on the basis of the aforesaid evidence, it is clearly established that these second party workmen were the employees/workmen of the first party no. 2 Shree Ganesh Caterers and they were deprived of their jobs without following the due procedure given in the Industrial Disputes Act.

6. Thus the reference is allowed. The first party no. 2 Shree Ganesh Caterers is directed to reinstate the applicants/workmen Rajesh Kumar Harsh Narayan Jha and Mahendra Ram Arya with immediate effect with a payment of Rs.5000/- as legal expenses. The first party no. 1 ONGC will ensure the compliance of this award from the date of the receipt of the copy of the award.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 175.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 6/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/315/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 175.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 13.01.2017.

[No. L-12012/315/2001-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/6/2002

Shri Dhurendra Kumar KJachwaha,  
S/o Ghaseta Prasad,  
Purani Basti,  
Nainpur

...Workman

**Versus**

Asstt. General Manager,  
SBI, Regional Office, Division II,  
Marhatal, Jabalpur (MP)

...Management

## AWARD

Passed on this 25<sup>th</sup> day of August, 2016

1. As per letter dated 27-12-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/315/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the Asstt. General Manager, State Bank of India, Regional Office, Dn.II, Jabalpur in terminating to Shri Dhurendra Kumar Kachwaha, S/o Ghaseetha Prasad Kachwaha, Purani Basti, At/PO Nainpur, Distt. Mandla from services is justified? If not, what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was working as messenger/guard/ waterman by the Bank his services were orally terminated on 21-5-00. He was not served with notice, retrenchment compensation was not paid to him. 2<sup>nd</sup> party did not comply provisions of Section 25-F, N of ID Act. He is covered as employee under Section 25 B of ID Act. 2<sup>nd</sup> party violated Rule 77, 78 of ID Rule 1957. 2<sup>nd</sup> party engaged other persons as messenger/ waterman namely Shri N.L.Yadav, Shahid Khan, Rohit Bairagi, Santulal Nanda, Tejpal, Mahavfeer Prasad at Kareli branch, Rajendra Prasad at Narsinghpur Main branch, Shobharam Namkdev, Surendra Rajak, Kripashankar Sen, Nazir, Bhola, Vinod Gupta, Punam Chandra Verma, Shailendra Joshi, Pradhan, Jaanwade, Bhagirath Sahu etc.thereby violated Section 25 H of ID Act. 2<sup>nd</sup> party by not paying equal wages violated Article 39(d) of ID Act. 2<sup>nd</sup> party has absorbed Punam Chandra Verma, Vijay Kashyap, Shri N.L.Yadav, Shahid Khan, Rohit Bairagi, Santulal Nanda, Tejpal, Mahavfeer Prasad at Kurli branch, Rajendra Prasad at Narsinghpur Main branch, Shobharam Namkdev, Surendra Rajak, Kripashankar Sen, Nazir, Bhola, Vinod Gupta, Punam Chandra Verma, Shailendra Joshi, Pradhan, Jaanwade, Bhagirath Sahu who had worked 60, 75 days in the Bank. This Tribunal has passed Award in R/169/90, 73/90, 182/87. On such ground, Ist party workman prays for his reinstatement with consequential benefits.

3. 2<sup>nd</sup> party filed Written Statement at Page 7/1 to 7/2 opposing claim of workman. 2<sup>nd</sup> party submits that Ist party was engaged as canteen boy in staff canteen at Nagpur branch during 1985 to 2000 by Local Implementation Committee. Workman was not appointed by management of branch. Bank is not concerned with his engagement. Bank has no right to supervise and control the Committee. The Bank is not under obligation about management of canteen in the branch. 2<sup>nd</sup> party further submits that engagement of Ist party workman doesnot amount to employment in the Bank. Ist party employee was initially engaged on daily wage basis as temporary messenger and was stopped. He worked 25 days as watchman in May 88 to July 88, 6 days as Messenger from June 88 to August 88, 22 days as watchman and 6 days as messenger during August 88 to December 88, 1 day as watchman during June 89 and 13 days as messenger during October 89 to November 89- total 74 days Ist party workman worked in the Bank. Ist party is not in employment of the Bank. His engagement could not be treated employment in Bank. He not completed 240 days working in any calendar year. Ist party is not entitled to protection of ID Act. Engagement of Ist party was on contract basis started from opening hours and ended after closing hours on next day. He was at liberty not to report for work. Management was also at liberty not to engage him on next day. The non-engagement of Ist party is covered under Section 2(oo)(bb) of ID Act. It doesnot amount to retrenchment.

4. 2<sup>nd</sup> party further submits that Bank has recruitment rules for selection of subordinate staff. Selection Committee used to be constituted for selection of sub staff, messengers etc. Workman was not appointed following selection procedure. The elaborate selection procedure evolved as per bipartite agreement dated 17-11-88, 16-7-88, 20-10-88, 9-1-91, 30-7-96, 20-2-97 provides eligibility criteria and selection procedure for appointment in subordinate cadre. Temporary employees working during the period -7-75 to 31-7-88 were given chance. Ist party workman had worked for 74 days. He was called for interview on 16-11-90 and found not eligible for permanent employment as per seniority. It is reiterated that workman was engaged by Local Implementation Committee as canteen boy for running staff canteen. He was not in employment of the Bank. Ist party had not completed 240 days continuous working. He is not covered as employee under Section 25 B of ID Act, violation of Section 25-F,N of ID Act is denied. That Ist party had worked only for 74 days upto cut off date 14-8-91. He stood at lower level of selected candidates absorbed by Bank. Ist party is not entitled for any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Asstt. General Manager, State Bank of India, Regional Office,	In Negative
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Dn.II, Jabalpur in terminating to Shri Dhurendra Kumar Kachwaha, S/o Ghaseetha Prasad Kachwaha, Purani Basti, At/PO Nainpur, Distt. Mandla from services is justified?	
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

6. The term of reference pertains to legality of termination of services of Ist party workman but denial of absorption of workman is not included in it. Ist party workman filed affidavit of his evidence. He has stated in his affidavit that he was engaged as messenger/ guard/ waterman from 16-5-88 to 20-5-00. He had completed 240 days working during each of the year. His services were terminated without notice on 21-5-00. He was not paid retrenchment compensation. Other persons Shri N.L.Yadav, Shahid Khan, Rohit Bairagi, Santulal Nanda, Tejlal, Mahavfeer Prasad at Kareli branch, Rajendra Prasad at Narsinghpur Main branch, Shobharam Namkdev, Surendra Rajak, Kripashankar Sen, Nazir, Bhola, Vinod Gupta, Punam Chandra Verma, Shailendra Joshi, Pradhan, Jaanwade, Bhagirath Sahu were appointed in violation of Section 25-H of ID Act. Those persons were appointed after termination of his services. 2<sup>nd</sup> party did not follow principles of last come first go. Management violated Rule 77, 78 under ID Rule 1958. In his cross, workman says he worked as messenger in Nagpur branch from 16-5-88 to 20-5-00. He also worked as Guard/ messenger, waterman. Appointment letter was not given to him. He produced documents about working as waterman. The candidates referred in Para 4 of his affidavit are regularly appointed namely Punam Chandra Verma, Vijay Kashyap, Shri N.L.Yadav, Shahid Khan, Rohit Bairagi, Santulal Nanda, Tejlal, Mahavfeer Prasad at Kurli branch, Rajendra Prasad at Narsinghpur Main branch, Shobharam Namkdev, Surendra Rajak, Kripashankar Sen, Nazir, Bhola, Vinod Gupta, Punam Chandra Verma, Shailendra Joshi, Pradhan, Jaanwade, Bhagirath Sahu are working at Nainpur branch. He was unable to tell the date of their appointment. Their appointment was after the year 2000. In his further cross, workman says he was paid Rs.32 per day which was increased. He denies that after 1989, he did not work in the Bank. He has not produced documents about his working in Bank after 1989. Documents were not supplied by Bank after his request. He has not retained copy of application submitted to the Bank.

7. Management's witness Shri Praveen Kumar Saxena filed affidavit supporting contentions of management in Written Statement. That Ist party workman had worked for 74 days as watchman cum messenger during the period May 88 to November 89. He was not appointed as messenger against vacant post. His engagement of workman was contractual and temporary on daily wage basis. Workman had not worked for 240 days or more in one calendar year. Management's witness denies that Shri Yadav, Shahid Khan, Rohit Bairagi, Santulal Nanda, Tejlal, Mahavfeer Prasad at Kareli branch, Rajendra Prasad at Narsinghpur Main branch, Shobharam Namkdev, Surendra Rajak, Kripashankar Sen, Nazir, Bhola, Vinod Gupta, Punam Chandra Verma, Shailendra Joshi, Pradhan, Jaanwade, Bhagirath Sahu were not appointed as permanent messenger. In his cross, management's witness says presently he does not know Ist party workman. He is posted in Nainpur branch from 2013. Prior to it, he was not posted in said branch. During 1988 to 2000, who was Branch Manager-he claims ignorance. In his further cross, management's witness says his affidavit is not based on personal information. His affidavit is based on record. All the documents are produced in the case. During 1988 to 2000, attendance register are not produced. Work of watch and ward is done by the guard without arms. In his further cross, management's witness admits that the work of watch and ward was taken from workman. He was paid wages under voucher, its entries were taken in cash book. Entry of payment was also taken in personal scroll. That he had not seen cashbook or transfer scroll, vouchers pertaining to payment made to workman. Management's witness admits if those documents are seen, payments made to workman can be ascertained. Management's witness denies that workman was doing work of watch and ward/ messenger during 16-5-88 to 20-5-00. Workman was not issued termination notice, retrenchment compensation is not paid to him.

8. Though management's witness has claimed that all documents are produced. Management has not produced any document about payments made to the workman. If evidence of Ist party workman and evidence of management's witness is considered simultaneously, the evidence of workman is hear say evidence. His evidence is not supported by any documents disclosed in his cross examination. In cross-examination of Ist party workman, there is no suggestion that workman had not completed 240 days working in the branch. If evidence of Ist party workman and management's witness is tested by probabilities, it is clear that evidence of management's witness is not supported by any documents regarding payments made to the workman. On what basis, management's witness says workman not worked for 240 days during any of the year is not explained from his evidence. The evidence adduced by workman is cogent. In Written Statement, 2<sup>nd</sup> party has taken defence that Ist party workman was engaged as canteen boy by Local Implementation Committee. The evidence of management's witness on above point is not supported by any documents., when Bank has no concern with working of Ist party as canteen boy, how management has came to know about it is not disclosed from evidence of management's witness. If evidence in cross examination of management's

witness is carefully considered, it is clear that management has suppressed material documents about payment of wages under voucher. Those documents are not produced. Therefore evidence of management's witness is absolutely not reliable. For above reasons, I accept evidence of workman that he was continuously working in the Bank during May 88 to May 2000. His services are terminated without notice, retrenchment compensation is not paid to workman. Therefore his termination is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of services of Ist party is illegal for violation of Section 25-F of ID Act, question remains for consideration whether workman is entitled for reinstatement with backwages. Ist party in his cross says he was not given appointment letter, he was engaged on daily wages, he was paid wages Rs.32 per day. Wages were increased time to time. Ist party was not appointed following recruitment rules.

10. Learned counsel for workman Shri A.K.shashi relies on ratio held in

Case between Jasmer Singh versus State of Haryana reported in 2015(4)MPLJ-5. Their Lordship dealing with termination of workman worked more than 240 days without complying Section 25-F held workman entitled for benefits of Section 25-F of ID Act. Termination is void-ab-initio. Reinstatement of workman in his job with continuity of service and full back wages was found justified.

Copies of award in R/191/91, R/88/01 are also submitted for perusal.

11. Shri A.K.Shashi also relies on ratio held in case of

Anoop Sharma versus Executive Engineer, Public Health Division No.1, Panipat reported in 2010(5)SCC-497. In above cited case, compensation amount was sent after about 3 months of termination, Labour Court set aside termination for non-compliance of Section 25-F of ID Act. Their Lordship restored Labour Court award for reinstatement with payment of back wages.

Reliance is also placed in case of Maharashtra State Board of Secondary and Higher Secondary Education, Amravati and another versus Sanjay Krishnarao Shrungare reported in 2008-II-CLR-301. Their Lordship of Bombay High Court, Nagpur Bench held that best possible evidence with the appellant on the point of total service put in by the respondents not brought on record by the appellant. Appellant has to blame for his failure on his part.

In present case, management has not produced documents about payment of wages to the workman despite the management witness has stated about the same in his cross examination.

12. Shri Shrotri for management opposed the relief of reinstatement relying on ratio held in case between

Chief Administrator, Housing Board, Haryana versus Diwan Chand reported in 2014(15)SCC-353. Their Lordship considering the fact that respondent was not in service for long period order passed by Labour Court modified by substitute compensation of Rs. One Lakh for reinstatement with continuity of service without backwages.

Reliance is also placed on ratio held in case between Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F, 25 B held facts that must be proved to claim relief from court-

- (I) Their exists relationship of employer and employee,
- (II) He is a workman under Section 2(s),
- (III) Establishment in which he is employed is an industry within meaning of the Act and
- (IV) He has put in not less than one year of continuous service.

In ratio held in case between Assistant Engineer, Rajasthan Development Corporation versus Gitam Singh reported in 2013(2)-SCC-(L&S)369. Their Lordship dealing with Section 25-F, 1-A of ID Act dealing with wrongful termination of daily rated worker held distinction should be drawn between daily rated workman and worker holding regular post. Service of daily wager who worked for short period of 240 days terminated by employer in contravention of Section 25-F. the award for reinstatement with continuity of service with 50 % back wages was held exercise of judicial discretion suffer from serious infirmity, compensation Rs. 50,000 was awarded.

In case between Vice Chancellor, Lucknow University, Lucknow, UP versus Akhilesh Kumar Khare and another reported in 2016(0)SCC(L&S) 186. Their Lordship of the Apex Court dealing with termination of services of casual labour held daily wager not entitled to regularization considering that respondents were out of employment for more than 20 years and cannot seek regular appointment elsewhere due to over age, compensation Rs.4 Lakh was directed to be paid.

Evidence of Ist party is convincing that he had worked more than 240 days, he is covered as workman under Section 2(s) of ID Act and respondent Bank is industry. However workman was engaged on daily wages. Evidence of

workman about engagement of other persons is after year 2000 subsequent to his termination. Violation of Section 25-N,G of ID Act cannot be established. As workman was engaged on daily wages from May 88 to May 2000 without following recruitment rules, reinstatement with backwages would not be appropriate. Considering the period of working, compensation Rs. 2 Lakh would meet the end of justice. Accordingly I record my finding in point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management is not legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs. 2 Lakh to workman Shri Dhurendra Kumar Kachwaha.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 176.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 64/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-41012/9/2008-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 176.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Pashimi Madhya Railway and their workmen, received by the Central Government on 13.01.2017.

[No. L-41012/9/2008-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/64/2008

Shri Sahabuddin S/o Shri Moiuddin,  
R/o Naya Mohalla, H.No.1017,  
Behind Bengali Mazjid,  
Jabalpur

...Workman

#### Versus

The Divisional Railway Manager,  
Pashimi Madhya Railway,  
Jabalpur

...Management

#### AWARD

Passed on this 29<sup>th</sup> day of August, 2016

1. As per letter dated 13-5-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/9/2008-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of West Central Railway, in terminating services of Shri Sahabuddin S/o Shri Moiuddin and not regularizing his services when he has done work from 1-11-1985 till 10-9-1985 is justified? To what relief is the workman concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/3. Case of Ist party is he was appointed in Railway as labour from 1-11-82. He was posted under Chief Goods Clerk, Mall Godown Jabalpur where he worked upto 10-9-85 in broken period, he completed 140 days continuously. From 11-9-85, he was discontinued from service without giving any appropriate opportunity and without giving any showcause notice. He was terminated with oral assurance that due to requirement of casual labour of Railway employee, ex card employees will get his job again. In the year 2003, Railway Board under the scheme of re-engagement of ex casual labour, re-engaged 350 casual labours in Grade D Category. Despite the Ist party submitted form, he was not re-engaged and get job in Grade D as per the scheme. Ist party workman submits that he was subjected to discrimination despite he was eligible for re-engagement. As casual card holder, he could not get appointment in Grade D. Ist party has raised dispute before Conciliation Officer – ALC Jabalpur. After failure report, dispute is referred for adjudication to the Tribunal. Ist party prays for regularization of his service in Grade D as per circular of Railway Board.

3. 2<sup>nd</sup> party filed Written Statement on 21-7-09 opposing claim of Ist party. 2<sup>nd</sup> party contends that Ist party never worked under Chief Goods Clerk Jabalpur. His name was not available in the prescribed register for period 1-11-82 to 10-9-85. Ist party has not produced documents to prove his continuous service. on the documents produced by Ist party, there is no official seal pertaining to operating department. The signature is nebulous in copy of casual card. That goods shed comes under control of ACM. 2<sup>nd</sup> party has denied workman was engaged from 1-11-82 to 10-9-85 in broken period. His discontinuation from 11-11-85 has also been denied. Above contentions are reiterated. That the dispute raised is highly belated after 22 years is not tenable. That the documents produced by Ist party are not issued by Competent Authority. Documents is doubtful. Claim of workman cannot be established. On such ground, 2<sup>nd</sup> party prays reference be answered in its favour.

4. Ist party submitted rejoinder reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of West Central Railway, in terminating services of Shri Sahabuddin S/o Shri Moiuddin and not regularizing his services when he has done work from 1-11-1985 till 10-9-1985 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

6. The term of reference pertains to legality of termination of services of Ist party workman and denial of regularization of his service. 2<sup>nd</sup> party has opposed claim of Ist party workman. Ist party workman filed affidavit of his evidence supporting his contentions in statement of claim. That he was appointed in Railway service as labour from 1-11-82. He was posted under Chief Good Clerk. He worked till 0-9-85 in broken period. He completed 140 days continuous working. His services were discontinued without giving opportunity of hearing or show cause notice. He was discontinued giving oral assurance that due to next requirement of casual labours of Railway, he will get the job again. That next requirement as per Railway Board in 2003 under scheme of re-engagement was not re-engaged in grade D category. In his cross, workman says post was not advertised, he was not orally interviewed, appointment letter was not given to him. He was paid wages for period of his engagement as casual labour. He used to sign the register. He worked under Chief Goods Clerk. He was unable to explain delay in raising dispute. That he has given details of his working for 120 days. He did not work under DRM. The documents are not forged. He denies that record about his working from 1-11-82 to 10-9-85 is not disclosing his name.

7. Management filed affidavit of evidence of witness Shri Kamal Tang supporting contentions in Written Statement filed by management. His affidavit is devoted denying claim of Ist party workman. Original documents are not produced by workman. From evidence of management's witness documents Exhibit M-1, M-(b), M-2 are admitted in evidence. Workman remained absent and failed to cross examine management's witness. Order dated 2-5-14 was called back. Thereafter management's witness remained absent for his cross examination. Their evidence cannot be considered.

8. Exhibit W-1 produced by Ist party is copy of reply submitted before ALC denying workman was engaged from 1-11-82 as casual labour. Exhibit M-1 produced by management is letter dated 12-1-09 informing that name of Ist party is not appearing in register of casual labour. Exhibit M-1(b) is letter dated 2-2-09 informing that name of Ist party is not

appearing in record of casual labour during the period 1-11-82 to 10-9-85. Management produced copy of Exhibit M-2 in R/64/08. The name of Ist party workman is not appearing in said document. Evidence produced on record cannot establish that workman worked as casual labour with 2<sup>nd</sup> party for 140/120 days. Workman has not produced documents w.r.t. order of Railway Board in the year 2003 scheme for re-engagement of ex-casual labour whereby 250 casual labours were re-engaged in Grade D Category. Therefore Ist party failed to establish that his services are terminated without any notice in violation of any rule or law. For above reasons, I record my finding in Point No.1 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management is not found illegal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 177.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 63/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-41012/8/2008-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 177.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Pashimi Madhya Railway and their workmen, received by the Central Government on 13.01.2017.

[No. L-41012/8/2008-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/63/2008

Shri Jafar Ahmed,  
S/o Abdul Bari,  
Qr.No. 486, In front of Dr. Ali,  
Naya Gaon, New Katni,  
Katni (MP)

...Workman

#### Versus

The Divisional Railway Manager,  
Pashimi Madhya Railway,  
Jabalpur

...Management

#### AWARD

Passed on this 29<sup>th</sup> day of August, 2016

1. As per letter dated 13-5-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/8/2008-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of DRM, West Central Railway, Jabalpur in terminating services of Shri Jafar Ahmed S/o Shri Abdul Bari, Ex-Library Assistant/ Casual Labour and not regularizing his services while he has worked from 10-2-89 to 26-6-90 in Railway Institute New Junction, Katni is justified, fair and legal? To what relief is the workman concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/3. Case of Ist party workman is that he was engaged as Library Assistant in Railway Institute at New Katni Junction, Katni MP from 10-2-89. He continuously worked till 26-6-90 for 295 days. He was discontinued from service without giving any opportunity, showcause notice. He further submits in the year 2003 as per order of Railway Board, 350 ex casual labours were re-engaged in service. He was not issued any letter. He had diligently worked for 395 days. In recruitment of 2003, he was entitled for re-engagement. The 2<sup>nd</sup> party management failed to consider him for re-appointment. Ist party workman submits as he couldnot be regularized, he had raised dispute before ALC on 30-10-07. After failure report submitted, the dispute has been referred. On such ground, Ist party prays for his re-engagement/regularization.

3. 2<sup>nd</sup> party management filed Written Statement opposing claim of Ist party. 2<sup>nd</sup> party denied that Ist party was employed as Library Assistant at New Katni Junction MP. The contentions of Ist party in that regard are false. 2<sup>nd</sup> party also denied that Ist party continuously worked for 295 days during the period 10-2-89 to 26-6-90. The contentions of workman are not related to the 2<sup>nd</sup> party management. 2<sup>nd</sup> party submits that Ist party was entrusted temporary work in Railway Institute at NKJ as Library Assistant. He is not Railway employee. He couldnot be treated as casual labour, therefore he is not entitled to get benefit of regularization. It is denied that Ist party had completed 395 days continuous working. He was not entitled for re-engagement in the year 2003 on post of Library Assistant. Management also reiterated that the claim of Ist party workman is barred by limitation as he was discontinued from service on 26-6-90. The dispute is raised after 20 years. Ist party is not in employment of Railway, he worked temporarily as Library Assistant in Railway Institute. It is clarified that Railway Institute are working as welfare measure hence the person working in the institute are solely appointed by the management committee of the institute elected among the members of the institute. The service conditions salary and termination are all decided by the Committee. Such persons are paid from internal sources of the institute and not from consolidated funds of Railway. Ist party appointed by Railway Cooperative society cannot be treated as Railway servant or casual labour. The disciplinary control by society subject to their bye laws and exclusively in domestic in character. The conditions of Indian Railway establishment are not applicable to such persons. Their services are covered by conditions of their appointment. The appointment is subject to the bond prescribed by the Registrar. The arrears of funds or misappropriated amount are recoverable under provisions of State Act and the rules there under. On such conditions, 2<sup>nd</sup> party prays reference be answered in its favour.

4. Ist party filed rejoinder on 9-4-2010 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of DRM, West Central Railway, Jabalpur in terminating services of Shri Jafar Ahmed S/o Shri Abdul Bari, Ex-Library Assistant/ Casual Labour and not regularizing his services while he has worked from 10-2-89 to 26-6-90 in Railway Institute New Junction, Katni is justified, fair and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

6. Term of reference pertains to legality of termination of Ist party workman Jafar Ahmad and denial of regularization of his services. 2<sup>nd</sup> party filing Written Statement has opposed claim of workman.

7. Ist party filed affidavit of his evidence. In his affidavit of evidence, he says that he was appointed in Railway Institute as Library Assistant and as such worked during the period 10-2-89 to 26-6-90 wihtout notice or giving opportunity of hearing. In his affidavit, he further contends that he was eligible for regularization due to requirement of ex-casual card holders in the year 2003. Due to negligence of department, he could not get appointment. In his cross-examination, Ist party says the post was not advertised, written test was not conducted, he was orally interviewed, appointment letter was not given to him. He had not left service of his own. He was told that when there was need, he would be called. He was working as casual labor, he was paid wages for working days. He submitted application 2-3 times as no decision was taken, he initiated the present proceeding. His working days are stated in his affidavit. He denies that he not produced certificate about working in Railway. He denies that he is not having casual labour card or documents about non-engagement in service. He denies that Ist party has not examined other witness, no documents are proved from his evidence.

8. Management filed affidavit of witness Shri Mahesh Kol. Affidavit of management's witness is devoted on the point on the point that applicant's claim is barred by limitation. His services were discontinued on 26-6-90. Application is filed on 26-5-08. That Secretary of Railway Institute NKJ informed him that record prior to 1996 are not available. In absence of old record, it cannot be proved that workman was working as Library Assistant in Railway Institute, NKJ. Affidavit of management's witness is in sake of denial of the claim of Ist party. That Railway Institute are working as self welfare measure hence the person working in the institution are solely appointed by the Institute management. Such persons are paid from internal sources of the institute and not paid from consolidated funds of Railway. The Ist party failed to cross-examine the witness was discharged. After order dated 22-5-2014 was called back, management's witness remained absent for his evidence. His evidence could not be considered.

9. Ist party workman is claiming regularization on the basis of order of Railway Board in the year 2003- 350 ex-casual labours have been re-engaged, he was not re-engaged. Ist party has not produced any document in regard to above contentions. Except evidence of Ist party, no other witness is examined to support his claim that Ist party was working under the 2<sup>nd</sup> party Railway Divisional Manager. The pleadings and evidence of Ist party are clear that he was working as Assistant Librarian/ casual labour in Railway Institute. The evidence adduced by Ist party does not disclose whether 2<sup>nd</sup> party has any kind of control over the Railway Institute, NKJ. Evidence on record is not sufficient to establish employer employee relationship between both the parties. Evidence is also not sufficient to establish that Ist party workman was working under 2<sup>nd</sup> party for more than 240 days preceding 12 months of his non-engagement. Therefore I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management is not proved to be illegal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 178.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 124/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/494/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 178.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 124/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 13.01.2017.

[No. L-12012/494/2000-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/124/2001

Shri Mukesh Kumar Sharma,  
H.No.17, Bangaro Ka Vas,  
Madhavpur, Ratlam 457001

...Workman

#### Versus

General Manager, (D&P)  
State Bank of India,  
Local Head Office,  
Hoshangabad Road,  
Bhopal

Assistant General Manager,  
State Bank of India, Region-V,  
Zonal Office, Hamidia Road, Bhopal

...Management

### AWARD

Passed on this 9<sup>th</sup> day of August, 2016

1. As per letter dated 26-6-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/494/2000/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Ratlam by not calling for the interview and terminating his services w.e.f. 1-9-97 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/4 to 2/12. Case of Ist party workman is his services were orally terminated from 2-1-87. The interview was held on 27-9-89 at Ratlam branch. That he was aggrieved by selection of juniors to him. It is alleged that list was changed three times for nepotism under pressure from Secretary of Union Vinod Pathak. 22 candidates from Chhindwara and many candidates from Ujjain were included in the select list. That Personnel Manager Karkare was resident of Ujjain was compulsorily retired for mass corruption in changing the list. Any conspiracy with Union Secretary Pathak.

3. Workman further submits that he worked for 83 days during the period 2-1-87 to 10-4-87 for 60 days during the period 1-10-88 to 30-11-88 at Main Branch, Collectorate branch respectively. He worked for 730 days during the period 19-8-95 to 1-9-97 in main branch as temporary messenger. However experience certificate was issued only for 83 days working in Collectorate Branch. Ist party submits that he worked on semi counter, current counter. He served water to the staff working in the Bank. He worked at SBI Extension counter Sajjan Mill and Diesel Shed, Ratlam. He also worked as messenger in cash department where person of high integrity is required to work. He has referred to the experience certificate issued by Bank. That he was expelled from service by Bank officials apprehending on completion of 873 days and disadvantageous labour laws. In his place temporary messenger was engaged for day to day working. The staff was short in the Bank. It was necessary to extract work of daily routine from temporary messengers.

4. That management had advertised vacancy of temporary messenger on 1-5-91 (labour day) He was called for interview on 28-9-89 as per the call letter. Ist party further contends that he was subjected to exploitation by the Bank. That he was not given appointment as regular messenger in the Bank. That he was not given appointment as regular messenger in the Bank. He submitted representation and legal notice. Management did not respond to it. Ist party further submits that relative of Dy.General Manager Mr. Jain was appointed though he had no experience. Kailash Upadhyay, brother in law, office bearer of the Union Pandey was also appointed. Other persons Laxmi Narayan Prajapati, Prakash Prajapati, Anil Bhawsar, Tejkumar Bhavsar, Manish Kumar, Rajesh Chouha & Vikram Purohit were shown favour and given appointment. Ist party workman further submits that his services were terminated in violation of Section 25-F of ID Act. On such ground, workman prays for his reinstatement with backwages.

5. 2<sup>nd</sup> party filed Written Statement at Page 13/1 to 13/10 opposing claim of Ist party. 2<sup>nd</sup> party submits that Ist party had worked for 83 days during the period 12-1-87 to 31-8-87. He worked for 99 days in 1995, 219 days in 1996, 147 days in 1997. That Ist party workman was not appointed following recruitment rules, he was engaged on daily wages for casual nature of work. He worked for 83 days covered by settlement. Ist party workman was engaged purely on daily wage basis as Hammal. He was free not to come on next day. Ist party had not completed 240 days service during any of the calendar year. He is not covered as employee under Section 25 of ID Act, he is not entitled to protection under Section 256-F of ID Act.

6. 2<sup>nd</sup> party further submits that settlements were arrived between management and Union dated 17-11-87, 16-7-88, 28-10-88, 9-1-99. As per settlement, Ist party workman was called for interview in February 1989. His working days were 83. Ist party could not be absorbed in service. seniority is considered as per the working days as per the settlement. Cut off date was extended till 14-8-91. The panel list was kept valid till March 1997. Empanelled candidates were to be appointed against vacant post. Workman could not be appointed as his working days were less. Allegation of nepotism and appointment of other candidates have been denied. Dis-engagement of daily wage employee does not require notice under Section 25-F or payment of retrenchment compensation. Workman had not completed 240 days continuous service he is not entitled to relief claimed by him.

7. Ist party workman filed rejoinder at Page 15/1 to 15/5 reiterating his contentions in statement of claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Ratlam by not calling for the interview and terminating his services w.e.f. 1-9-97 is justified?	In Negative
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(ii) If not, what relief the workman is entitled to?"	As per final order.
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## REASONS

9. The term of reference pertains to not calling workman for interview and terminating his services from 1-9-97 Para 3 of the statement of claim refers to termination of services of workman w.e.f. 2-1-87. However the next pleadings in Para 6(1), it is clear that workman was working during period 2-1-87 to 10-4-87. The pleadings in Para-3 appears to be error. Ist party workman has produced advertisement dated 1-5-91 at Exhibit W-2. Temporary employees working during the period 1-7-75 to 31-7-88 were invited to submit application for absorption as peon, sweeper etc. copy of settlement dated 17-11-87 produced on record at Exhibit M-3 clearly provides that temporary employees completing 240 days service in 12 months after 1-7-75, 240 days temporary service in any continuous block of 36 calendar months after 1-7-75, minimum 30 days service in any calendar year after 1-7-75 or 70 days aggregate temporary service in any continuous block of 36 calendar months after 1-7-75 were eligible for absorption in regular service. in Written Statement filed by 2<sup>nd</sup> party, management admitted that workman had worked for 83 days during the period 12-1-87 to 31-8-87. That Ist party workman was called for interview in February 1989. 2<sup>nd</sup> party has not produced any select list after interview held in February 1989. Select List produced by 2<sup>nd</sup> party Exhibit M-4 is of the year 1997. After advertisement in 1991, workman was not called for interview. However his name is appearing at S1.No.270, the working days are shown 83 days. The affidavit of evidence of Ist party workman is however devoted on point that he had worked on various counters of the Bank, his work was not appreciated, he was continuously working without renewing the contract. That Bank's rules and manuals and instructions deals with maintaining record of temporary employees etc. that the management has deliberately not produced record of his service that he had worked more than 240 days artificial breaks were given to him. In Para-6 of the affidavit of his evidence, workman request for production of certain documents. In his cross-examination, workman says he passed 8<sup>th</sup> standard, he could not read or understand English. His date of birth is 4-7-66. Presently he is working on hand card. After his re-examination, documents received by him under RTI are admitted in evidence and marked Exhibit W-1,2.

10. Management's witness Sanjay Pagey filed affidavit of his evidence. 83 working days during the period 12-1-87 to 31-8-87 are admitted and other working days shown in Written Statement are also admitted. As per settlement, workman was given opportunity for absorption. However affidavit of management's witness doesnot show the date when workman was called for interview. In Written Statement, management has pleaded workman was called for interview in 1989. Any select list as per interview in 1989 is not produced. Evidence of management's witness is silent what was result of interview in 1989. The affidavit of evidence of management's witness is devoted that Ist party workman was not entitled to permanent appointment as per settlement dated 17-11-87. In his cross-examination, management's witness says he was not working in the branch in 1990. He had not seen record about working of the workman. Working days are shown in affidavit as per available record. He seen select list. As per settlement of 1987, employees working maximum period were selected. He claims ignorance about the documents received by workman under RTI. Panel list was valid till 1997. Documents produced by workman received under RTI Act shows Exhibit W-2 shows that Prakash Chandra working as gardner in Feb88 was appointed. Article A-14 is appointment letter dated 31-3-97 is copy of appointment letter but name of employee is not appearing. A-15 with Exhibit W-2 shows Anil Kumar Bhavsar had 115 days working in 1988. Article A-16 is copy of appointment letter but the name of candidate is not appearing, signature of Laxminarayan is appearing on appointment letter. Article A-17 working days of Manish Kumar are shown 55 in 1990, 125 days in 1991. The select list M-4 shows persons having less number of working days than workman are not given appointment. Said select list is of 1997. Workman not appeared for interview. He appeared for interview in February 1989. Management has not produced select list shows that workman is not given benefit of absorption in service as per settlement dated 17-11-87 despite workman had appeared for interview in February 1989. What was the result of said interview is suppressed by management. Without giving benefit of settlement, workman is disengaged is illegal. The evidence on record is not clear w.r.t. violation of Section 25-F of ID Act. However the Ist party workman is denied absorption in service as per settlement dated 17-11-87.

11. Learned counsel for 2<sup>nd</sup> party Shri Ashish Shrotri relies on ratio held in case of

Regional Manager, State Bank of India versus Rakesh Kumar Tewari reported in 2006(1)SCC-530. The ratio held in the case pertains to Section 25-H,G assumes that the retrenchment has been validly made. The two sections therefore operate in different fields and deal with two contradictory fact situations held if the plea in respect of Section 25 G is not put forward, the opportunity for leading evidence thereon is denied, for no amount of evidence can be looked into unless a plea is raised.

The ratio held in the case cannot be applied to present case at hand as facts of present case are not comparable. Despite of Ist party was interviewed in February 1989, the management has suppressed select list after said interview and Ist party workman despite working for 83 days during settlement period, he is denied absorption. Workman has been disengaged. Therefore action of 2<sup>nd</sup> party is illegal. For above reasons, I record my finding in Point No.1 in Negative.

12. Point No.2- In view of my finding in Point No.1, Ist party workman is denied absorption, he was interviewed in February 1989, management has not produced relevant record after said interview. Therefore denial of absorption and

disengaging workman is illegal. Under the circumstances, question remains for consideration is as to what relief workman is entitled? As workman was interviewed and management has with held the outcome of interview, the workman deserves to be absorbed in regular service as per settlement dated 17-11-87. However Ist party workman in his evidence says that he is working on handcard and maintaining his family, full backwages would not be justified. The dispute is referred as per order dated 26-6-2001. The terms of reference pertains to termination of services w.e.f. 1-9-97. Relief to the workman deserves to be suitably moulded from date of order of reference i.e. 26-6-01. Considering the evidence, workman is earning from handcard, the relief for absorption of Ist party deserves to be allowed with 25 % backwages. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management not calling workman for interview as per advertisement in 1991 is illegal. Management instead of absorbing workman, disengaging him is illegal.
- (2) 2<sup>nd</sup> party is directed to absorb workman w.e.f. date of order of reference i.e. 26-6-01 . Ist party be paid 25 % wages from 26-6-01 till date of award.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 179.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 115/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/509/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 179.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 115/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 13.01.2017.

[No. L-12012/509/2000-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/115/2001

Shri Soubhagyamal Paudwal,  
S/o Ganeshilal Paudiwal,  
H.No. 83, Sukhlal Nagar,  
Rang Kharhana,  
Kapal Kunj,  
Ratlam

...Workman

#### Versus

General Manager,  
State Bank of India,  
Local Head Office,  
Hoshangabad Road,  
Bhopal

Assistant General Manager,  
State Bank of India, Region-V,  
Zonal Office, Hamidia Road, Bhopal

...Management

## AWARD

Passed on this 10<sup>th</sup> day of August 2016

1. As per letter dated 19-6-16 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/509/2000-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Main Branch, Ratlam by not considering Shri Soubhagyamal Paudwal S/o Ganeshilal Paudwal for regular employment even though he was wait listed after interview is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/4 to 2/12. Case of Ist party workman is that he was working as messenger in Mainbranch of 2<sup>nd</sup> party from 2-1-85 to 24-3-85 for 80 days as messenger. He worked on different counters of the Bank. He had served the customers. He relies on experience certificate. That Bank Officers afraid of completion of 90 days working and disadvantageous labour laws orally removed him from service. another temporary messenger was kept by the Bank as staff was short in the Bank. The work was extracted from temporary messenger. 2<sup>nd</sup> party Bank had issued public advertisement in Daily Newspaper Dainik Bhaskar on 1-5-91 for filling vacancies of temporary messengers, sweepers, coolies etc. he was called for interview on 27-9-89 in Ratlam Branch. Bank had issued circular w.r.t. award staff. That he worked from 9 AM to 7 PM. He was having experience of working in the Bank.

3. Ist party submits that he had submitted representations and legal notice dated 25-1-00. Ist party alleges nepotism in the matter of select list. That one Kailash Upadhyay who was brother in law of the officer bearer of the Union. Brother-in-law of D.P.Pandey were shown favour. Their names were included. That Laxminarayan Prajapat, Anil Bhawsar, Tejkumar Bhawsar, Manish Kumar, Rajesh Chouhan & Vikram Purohit junior to him were also included in the select list. Ist party workman further contends that he had completed more than 240 days continuous service. his services were terminated without notice in violation of Section 25-F of ID Act. On such ground Ist party prays for reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement at Page 9/1 to 9/10 opposing claim of workman. 2<sup>nd</sup> party submits that Ist party workman had worked for 80 days during the period 2-1-85 to 24-3-85. That Ist party was engaged on contract basis as per exigencies. After the work was completed, he was not required to report for the work. That Ist party workman was engaged as daily rated casual employee. He was not required to attend work on next day. His disengagement is not covered under Section 2(oo) of ID Act. His disengagement is covered under Section 2(oo)(bb) of ID Act.

5. 2<sup>nd</sup> party further submits that bipartite agreements were settled between management and the Union dated 17-11-87, 16-7-88, 28-10-88, 9-1-91 providing opportunity for absorption of temporary employees working during the period 1-7-75 to 31-7-88. Said period was extended from 31-7-88 to 14-8-91. The eligible casual employees had submitted applications to the Bank. Ist party workman had submitted application claiming that he had worked for 80 days as per certificate issued by Ratlam branch. He was called for interview in February 1989. Ist party not found eligible for permanent employment as per seniority. Therefore he cannot be appointed as regular employee. 2<sup>nd</sup> party further submits that casual engagement of Ist party doesnot give him right for regular employment. It is reiterated that Ist party workman after interview on 28-9-89 was not found eligible considering he worked for 80 days prior to cut off date 14-8-91. Ist party workman had not worked more than 240 days during any of the calendar years as per Section 25 B of the ID Act. 2<sup>nd</sup> party submits that section 25-F is not applicable in the matter. On such ground, 2<sup>nd</sup> party submits that claim of workman cannot be allowed.

6. Ist party workman submitted rejoinder at Page 11/1 to 11/3 reiterating his contentions in statement of claim. In rejoinder, Ist party workman further alleged that 22 candidates from Chhindwara and same others from Ujjain were appointed by Nepotism. Personal Manager Karkare and Secretary of SBI Association Vinod Pathak had included names of such persons in the select list. The allegations are also made against by General Manager Jain for appointing his relatives as messenger who did not possess requesting qualification.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Main Branch, Ratlam by not considering Shri Soubhagyamal Paudwal S/o Ganeshilal Paudwal for regular employment even though he was wait listed after interview is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

## REASONS

8. Point No.1 Term of reference pertains to 1st party workman not considering for regular employment even though he was waitlisted after interview. The term of reference doesnot include legality of termination of his service in violation of Section 25-F of ID Act is not covered within the term of reference. As per pleadings between parties, there is no dispute that workman had worked for 80 days during period 2-1-85 to 24-3-85 i.e. settlement period. The pleadings of parties also clearly shown that workman was called for interview on 28-9-89.

9. 1st party workman filed affidavit of his evidence. He stated that he worked in main branch of SBI as messenger from 2-1-85 to 24-3-85. He worked for 80 days as messenger. That Shri Anil Bhawsar, Prakash Prajapath, Anil Kumar, Manish Kumar who were junior to him were inducted in service. that particulars of selected candidates be produced. That Bank deliberately indulged in malpractices preventing qualification service giving artificial breaks etc. 32 candidates of Vinod Pathak, Secretary of State Bank of India Employees Union selected by favour. Those candidates had no experience certificate. That Bank management has produced false and fabricated record. In his cross-examination, 1st party workman says he has passed 8<sup>th</sup> standard, he could not understand English. Affidavit of his evidence was drafted by his Advocate was read over to him. The date of birth is 8-8-61. The candidates who worked for lesser days, the certificates are produced on record. He claims ignorance about the candidates working less number of days than him. Mr. Karkare Bank Officer had committed irregularities in the interview was suspended. 1st party workman was re-examined and from his evidence, documents Exhibit W-1, W-2 are admitted in evidence. Those documents were received by him under RTI Act. In his further cross examination, workman says that documents Exhibit W-1, 2 were sent to him is not clearly written on those documents. He denies that he had given false evidence.

10. Management filed affidavit of evidence of witness Shri Sanjay Page. In Para-2 of his affidavit, management's witness has stated that workman worked for 80 days during the period 2-1-85 to 24-3-85. Workman had not completed 240 days working. As per settlement dated 17-11-87, opportunity was given for permanent employment. Interviews were held. However his affidavit is silent, is not clear about when 1st party was called for interview. Last appointed Bhagwandas Aswani had worked for 96 days, his name is at Sl.No. 161 of the select list. Select List is valid till 31-3-97. Violation of settlement dated 17-11-87 is denied. From evidence of management's witness, select list Exhibit M-4 is admitted in evidence. In his cross examination, management's witness stated he doesnot know workman personally. He was not working under him. He had not seen record about working days of workman. He denies that in his affidavit, working days of workman are wrongly shown. Workman had shown his working days in the application for selection. They have seen number of working days in the select list. He not seen application of the workman management's witness denies that workman had worked more than 240 days during each of the year 1992 to 1997.

11. Copy of settlement dated 17-11-87 is produced on record. Above settlement provides that temporary employees in subordinate cadre he given consideration for giving permanent appointment in the Bank, vacancies likely to arise during 1987 to 1997. Those who completed 240 days temporary service in 12 months or less after 1-7-75 (ii) those who have completed 270 days aggregate temporary service in continuous block of 36 calendar months after 1-7-75, (iii) those who have completed minimum 30 days aggregate temporary service in any calendar year after 1-7-75 or 70 days aggregate service in continuous block of 36 calendar months after 1-7-75. The evidence on record shows 1st party worked for 80 days as per above settlement in the year 1985. He was called for interview on 28-9-89. However pleadings and evidence of management's witness is not clear what was the result after interviews held in the year 1989. The select list produced on record doesnot show the year select list was prepared. Exhibit M-1, M-2 are copies of the submissions before ALC. Select list Exhibit M-4 list is clear that it is not select list prepared after interview of 1st party workman in 1989 why management has not prepared select list after interview of workman in 1989, there is absolutely no explanation in pleadings and evidence of 2<sup>nd</sup> party. Therefore the evidence of 1st party workman that in said select list, candidates were included illegally appears convincing. When workman was not interviewed after 1989, he cannot be expected to compete with other persons included in select list Exhibit M-4. The certified copy of select list in R/125/01 is also produced in present case. Name of workman is appearing at Sl.No.313 in Exhibit M-4. Though the 1st party had not appeared for interview after 1989 and advertisement in the year 1991. Select List Exhibit M-4 cannot be said valid w.r.t. selection of workman after his interview in 1989. Management has not produced any record w.r.t. selection after interview in 1989. The allegation of 1st party workman about irregularities in selection list and illegal appointments made after his interview is reliable.

12. Learned counsel for 2<sup>nd</sup> party Shri Ashish Shrotri relies on ratio held in case of

Regional Manager, State Bank of India versus Rakesh Kumar Tewari reported in 2006(1)SCC-530. The ratio held in the case pertains to Section 25-H,G assumes that the retrenchment has been validly made. The two sections therefore operate in different fields and deal with two contradictory fact situations held if the plea in respect of Section 25 G is not put forward, the opportunity for leading evidence thereon is denied, for no amount of evidence can be looked into unless a plea is raised.

The ratio held in the case cannot be applied to present case at hand as the term of reference does not include legality of termination of workman. The term of reference are restricted to denial of regular employment to workman after he was interviewed. For above reasons, I record my finding in Point No.1 in Negative.

13. Point No.2 In view of my finding in Point No.1 action of management not providing regular employment to him after his interview is illegal. Question arise to what relief workman is entitled? As per settlement dated 17-11-87 though 1st party workman was interviewed on 28-9-89, 2<sup>nd</sup> party management has not produced any document about select list prepared after interview of workman, 1st party cannot be compared with the candidates who are included in the select list Exhibit M-4 prepared subsequent in time. The denial of regular employment to 1st party workman is in violation of Settlement of 1987 is illegal. 1st party workman is entitled for regular employment in pursuance of settlement dated 17-11-87. The present dispute is raised in the year 2001. Legal position is settled that benefit of the award should be given from the date of order of reference. The evidence of 1st party shows that his family consists of his wife and two children. The expenses of his family are incurred from his wages. Thus 1st party workman is working for wages. Considering facts and circumstances of the case and 1st party workman is earning wages, 1st party is entitled for regular employment with 25 % wages from the date of order of reference i.e. 19-6-01. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the management is illegal.
- (2) 2<sup>nd</sup> party is directed to provide regular employment to 1st party workman as per settlement dated 17-11-87. Ist party be paid 25 % wages w.e.f. date of reference 19-6-01 till date of award.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 180.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 125/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/495/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 180.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 125/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 13.01.2017.

[No. L-12012/495/2000-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/125/2001

Shri Vijay Bahadur Sodha,  
S/o Harinarayan Sodha, 359,  
Kasturba Nagar  
Ratlam

...Workman

**Versus**

General Manager,  
State Bank of India,  
Local Head Office,  
Hoshangabad Road,  
Bhopal

Assistant General Manager,  
State Bank of India, Region-V,  
Zonal Office, Hamidia Road, Bhopal

...Management

### AWARD

Passed on this 10<sup>th</sup> day of August, 2016

1. As per letter dated 19-6-16 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/495/2000-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Main Branch, Ratlam by not considering Shri Vijay Bahadur Sodha, S/o Harinarayan Sodha for regular employment even though he was wait listed after interview is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/3 to 2/11. Case of Ist party workman is that he was working as messenger for 8 days till 13-7-88. He was working in Mainbranch of 2<sup>nd</sup> party from 9-2-94 to 23-5-94 for 105 days, 18-7-95 to 2-8-97 for 745 days and from 25-5-94 to 17-7-95 for 418 days as messenger. He worked on different counters of the Bank. He had served the customers. He relies on experience certificate. That Bank Officers afraid of completion of 90 days working and disadvantageous labour laws orally removed him from service another temporary messenger was kept by the Bank as staff was short in the Bank. The work was extracted from temporary messenger. 2<sup>nd</sup> party Bank had issued public advertisement in Daily Newspaper Dainik Bhaskar on 1-5-91 for filling vacancies of temporary messengers, sweepers, coolies etc. he was called for interview on 27-9-89 in Ratlam Branch. Bank had issued circular w.r.t. award staff. That he worked from 9 AM to 7 PM. He was having experience of working in the Bank.

3. Ist party submits that he had submitted representations and legal notice dated 25-1-00. Ist party alleges nepotism in the matter of select list. That one Kailash Upadhyay who was brother in law of the officer bearer of the Union. Brother-in-law of D.P.Pandey were shown favour. Their names were included. That Laxminarayan Prajapat, Anil Bhawsar, Tejkumar Bhawsar, Manish Kumar, Rajesh Chouhan & Vikram Purohit junior to him were also included in the select list. Ist party workman further contends that he had completed more than 240 days continuous service. his services were terminated without notice in violation of Section 25-F of ID Act. On such ground Ist party prays for reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement at Page 9/1 to 9/10 opposing claim of workman. 2<sup>nd</sup> party submits that Ist party workman had worked for 78 days during 24-4-85 to 13-7-85 & 78 days during the period 9-2-94 to 23-5-94. That Ist party was engaged on contract basis as per exigencies. After the work was completed, he was not required to report for the work. That Ist party workman was engaged as daily rated casual employee. He was not required to attend work on next day. His disengagement is not covered under Section 2(oo) of ID Act. His disengagement is covered under Section 2(oo)(bb) of ID Act.

5. 2<sup>nd</sup> party further submits that bipartite agreements were settled between management and the Union dated 17-11-87, 16-7-88, 28-10-88, 9-1-91 providing opportunity for absorption of temporary employees working during the period 1-7-75 to 31-7-88. Said period was extended from 31-7-88 to 14-8-91. The eligible casual employees had submitted applications to the Bank. Ist party workman had submitted application claiming that he had worked for 78 days as per certificate issued by Ratlam branch. He was called for interview in February 1989. Ist party not found eligible for permanent employment as per seniority. Therefore he cannot be appointed as regular employee. 2<sup>nd</sup> party further submits that casual engagement of Ist party does not give him right for regular employment. It is reiterated that Ist party workman after interview on 28-9-89 was not found eligible considering he worked for 78 days prior to cut off date 14-8-91. Ist party workman had not worked more than 240 days during any of the calendar years as per Section 25 B of the ID Act. 2<sup>nd</sup> party submits that section 25-F is not applicable in the matter. On such ground, 2<sup>nd</sup> party submits that claim of workman cannot be allowed.

6. Ist party workman submitted rejoinder at Page 10/1 to 10/3 reiterating his contentions in statement of claim. In rejoinder, Ist party workman further alleged that 22 candidates from Chhindwara and same others from Ujjain were appointed by Nepotism. Personal Manager Karkare and Secretary of SBI Association Vinod Pathak had included names of such persons in the select list. The allegations are also made against by General Manager Jain for appointing his relatives as messenger who did not possess requesting qualification.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Main Branch, Ratlam by not considering Shri Vijay Bahadur Sodha, S/o Harinarayan Sodha for regular employment even though he was wait listed after interview is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

8. Point No.1 Term of reference pertains to Ist party workman not considering for regular employment even though he was waitlisted after interview. The term of reference doesnot include legality of termination of his service in violation of Section 25-F of ID Act is not covered within the term of reference. As per pleadings between parties, there is no dispute that workman had worked for 78 days during period 24-4-85 to 13-7-85 i.e. settlement period. The pleadings of parties also clearly shown that workman was called for interview on 28-9-89.

9. Ist party workman filed affidavit of his evidence. He stated that he worked in main branch of SBI as messenger for 1349 days. He worked more than 240 days. That Shri Anil Bhawsar, Prakash Prajapath, Anil Kumar, Manish Kumar who were junior to him were inducted in service. That particulars of selected candidates be produced. That Bank deliberately indulged in malpractices preventing qualification service giving artificial breaks etc. 32 candidates of Vinod Pathak, Secretary of State Bank of India Employees Union selected by favour. Those candidates had no experience certificate. That Bank management has produced false and fabricated record. Ist party workman not appeared for his cross-examination. His evidence was closed on 22-12-2010.

10. Management filed affidavit of evidence of witness Shri Sanjay Page. In Para-2 of his affidavit, management's witness has stated that workman worked 78 days during 24-4-85 to 13-7-85 & 78 days during the period 9-2-94 to 23-5-94, 352 days during 5-6-94 to 17-7-95, 584 days during period 18-7-95 to 16-8-97. As per settlement dated 17-11-87, opportunity was given for permanent employment. Interviews were held. However his affidavit is silent, is not clear about when Ist party was called for interview. Last appointed Bhagwandas Aswani had worked for 96 days, his name is at Sl.No. 161 of the select list. Select List is valid till 31-3-97. Violation of settlement dated 17-11-87 is denied. From evidence of management's witness, documents M-1, M-2 are admitted in evidence. Select list is produced. Name of workman is appearing at Sl.No. 327 in select list Exhibit M-4. His working days are shown 78 – decision-“Suitable”, Remark- Category I. management's witness in his cross examination, admits Exhibit M-1 is not bearing signature of any member of selection committee. He also admits that selection committee was constituted for selection and member of committee signed the list. He has not seen selection list signed by member of committee. Personally he had not seen documents about working days of candidates shown in para 2 of his affidavit. He was not present with Exhibit M-1 was prepared.

11. Copy of settlement dated 17-11-87 is produced on record. Above settlement provides that temporary employees in subordinate cadre he given consideration for giving permanent appointment in the Bank, vacancies likely to arise during 1987 to 1997. Those who completed 240 days temporary service in 12 months or less after 1-7-75 (ii) those who have completed 270 days aggregate temporary service in continuous block of 36 calendar months after 1-7-75, (iii) those who have completed minimum 30 days aggregate temporary service in any calendar year after 1-7-75 or 70 days aggregate service in continuous block of 36 calendar months after 1-7-75. The evidence on record shows Ist party worked for 80 days as per above settlement in the year 1985. He was called for interview on 28-9-89. However pleadings and evidence of management's witness is not clear what was the result after interviews held in the year 1989. The select list produced on record doesnot show the year select list was prepared. Exhibit M-1, M-2 are copies of the submissions before ALC. Select list Exhibit M-4 is clear that it is not select list prepared after interview of Ist party workman in 1989 why management has not prepared select list after interview of workman in 1989, there is absolutely no explanation in pleadings and evidence of 2<sup>nd</sup> party. Therefore the evidence of Ist party workman that in said select list, candidates were included illegally appears convincing. When workman was not interviewed after September 1989, he cannot be expected to compete with other persons included in select list Exhibit M-4. The certified copy of select list in R/125/01 is also produced in present case. Name of workman is appearing at Sl.No.327 in Exhibit M-4. Though the Ist party had not appeared for interview after 1989 and advertisement in the year 1991. Select List Exhibit M-4 cannot be said valid w.r.t. selection of workman after his interview in 1989. Management has not produced any record

w.r.t. selection after interview in 1989. The allegation of Ist party workman about irregularities in selection list and regular appointments made after his interview is reliable.

12. Learned counsel for 2<sup>nd</sup> party Shri Ashish Shrotri relies on ratio held in case of

Regional Manager, State Bank of India versus Rakesh Kumar Tewari reported in 2006(1)SCC-530. The ratio held in the case pertains to Section 25-H,G assumes that the retrenchment has been validly made. The two sections therefore operate in different fields and deal with two contradictory fact situations held if the plea in respect of Section 25 G is not put forward, the opportunity for leading evidence thereon is denied, for no amount of evidence can be looked into unless a plea is raised.

The ratio held in the case cannot be applied to present case at hand as the term of reference does not include legality of termination of workman. The term of reference are restricted to denial of regular employment to workman after he was interviewed. For above reasons, I record my finding in Point No.1 in Negative.

13. Point No.2 In view of my finding in Point No.1 action of management not providing regular employment to him after his interview is illegal. Question arise to what relief workman is entitled? As per settlement dated 17-11-87 though Ist party workman was interviewed on 28-9-89, 2<sup>nd</sup> party management has not produced any document about select list prepared after interview of workman, Ist party cannot be compared with the candidates who are included in the select list Exhibit M-4 prepared subsequent in time. The denial of regular employment to Ist party workman is in violation of Settlement of 1987 is illegal. Ist party workman is therefore entitled for regular employment in pursuance of settlement dated 17-11-87. As Ist party workman not appeared for cross-examination, grant of backwages would not be justified. As such in my view Ist party is entitled for regular employment but without backwages. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the management is illegal.
- (2) 2<sup>nd</sup> party is directed to provide regular employment to Ist party workman as per settlement dated 17-11-87 but without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 181.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 116/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-12012/508/2000-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 181.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 13.01.2017.

[No. L-12012/508/2000-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/116/2001

Shri Anandilal Dabkara,  
S/o Shri Mathuralal Dabkara,  
Sajjan Mill Road Over Bridge,  
Sakhwal Nagar  
Ratlam

...Workman

**Versus**

General Manager,  
State Bank of India,  
Local Head Office,  
Hoshangabad Road,  
Bhopal

Assistant General Manager,  
State Bank of India, Region-V,  
Zonal Office, Hamidia Road, Bhopal

...Management

**AWARD**

Passed on this 10<sup>th</sup> day of August, 2016

1. As per letter dated 19-6-16 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/508/2000-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Main Branch, Ratlam by not considering Shri Anandilal Dabkara, S/o Shri Mathuralal Dabkara for regular employment even though he was wait listed after interview is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/2 to 3/10. Case of Ist party workman is that he was working as messenger in Mainbranch of 2<sup>nd</sup> party from 29-3-85 to 16-6-85 for 78 days as messenger. He worked on different counters of the Bank. He had served the customers. He relies on experience certificate. That Bank Officers afraid of completion of 90 days working and disadvantageous labour laws orally removed him from service another temporary messenger was kept by the Bank as staff was short in the Bank. The work was extracted from temporary messenger. 2<sup>nd</sup> party Bank had issued public advertisement in Daily Newspaper Dainik Bhaskar on 1-5-91 for filling vacancies of temporary messengers, sweepers, coolies etc. he was called for interview on 27-9-89 in Ratlam Branch. Bank had issued circular w.r.t. award staff. That he worked from 9 AM to 7 PM. He was having experience of working in the Bank.

3. Ist party submits that he had submitted representations and legal notice dated 25-1-00. Ist party alleges nepotism in the matter of select list. That one Kailash Upadhyay who was brother in law of the officer bearer of the Union. Brother-in-law of D.P.Pandey were shown favour. Their names were included. That Laxminarayan Prajapat, Anil Bhawsar, Tejkumar Bhawsar, Manish Kumar, Rajesh Chouhan & Vikram Purohit junior to him were also included in the select list. Ist party workman further contends that he had completed more than 240 days continuous service. his services were terminated without notice in violation of Section 25-F of ID Act. On such ground Ist party prays for reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement at Page 11/1 to 11/9 opposing claim of workman. 2<sup>nd</sup> party submits that Ist party workman had worked for 78 days during the period 29-3-85 to 16-6-85. That Ist party was engaged on contract basis as per exigencies. After the work was completed, he was not required to report for the work. That Ist party workman was engaged as daily rated casual employee. He was not required to attend work on next day. His disengagement is not covered under Section 2(oo) of ID Act. His disengagement is covered under Section 2(oo)(bb) of ID Act.

5. 2<sup>nd</sup> party further submits that bipartite agreements were settled between management and the Union dated 17-11-87, 16-7-88, 28-10-88, 9-1-91 providing opportunity for absorption of temporary employees working during the period 1-7-75 to 31-7-88. Said period was extended from 31-7-88 to 14-8-91. The eligible casual employees had submitted applications to the Bank. Ist party workman had submitted application claiming that he had worked for 80 days as per certificate issued by Ratlam branch. He was called for interview in February 1989. Ist party not found eligible for permanent employment as per seniority. Therefore he cannot be appointed as regular employee. 2<sup>nd</sup> party further submits that casual engagement of Ist party does not give him right for regular employment. It is reiterated that Ist party workman after interview on 28-9-89 was not found eligible considering he worked for 80 days prior to cut off date 14-8-91. Ist party workman had not worked more than 240 days during any of the calendar years as per Section 25 B of the ID Act. 2<sup>nd</sup> party submits that section 25-F is not applicable in the matter. On such ground, 2<sup>nd</sup> party submits that claim of workman cannot be allowed.

6. Ist party workman submitted rejoinder at Page 13/1 to 13/3 reiterating his contentions in statement of claim. In rejoinder, Ist party workman further alleged that 22 candidates from Chhindwara and same others from Ujjain were appointed by Nepotism. Personal Manager Karkare and Secretary of SBI Association Vinod Pathak had included names of such persons in the select list. The allegations are also made against by General Manager Jain for appointing his relatives as messenger who did not possess requesting qualification.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Main Branch, Ratlam by not considering Shri Anandilal Dabkara, S/o Shri Mathuralal Dabkara for regular employment even though he was wait listed after interview is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

8. Point No.1 Term of reference pertains to Ist party workman not considering for regular employment even though he was waitlisted after interview. The term of reference doesnot include legality of termination of his service in violation of Section 25-F of ID Act is not covered within the term of reference. As per pleadings between parties, there is no dispute that workman had worked for 80 days during period 29-3-85 to 16-6-85 i.e. settlement period. The pleadings of parties also clearly shown that workman was called for interview on 28-9-89.

9. Ist party workman filed affidavit of his evidence. He stated that he worked in main branch of SBI as messenger from 29-3-85 to 16-6-85. He worked for 80 days as messenger. That Shri Anil Bhawsar, Prakash Prajapath, Anil Kumar, Manish Kumar who were junior to him were inducted in service that particulars of selected candidates be produced. That Bank deliberately indulged in malpractices preventing qualification service giving artificial breaks etc. 32 candidates of Vinod Pathak, Secretary of State Bank of India Employees Union selected by favour. Those candidates had no experience certificate. That Bank management has produced false and fabricated record. In his cross-examination, Ist party workman says he has passed 8<sup>th</sup> standard, he could not understand English. Affidavit of his evidence was drafted by his Advocate was read over to him. The date of birth is 8-8-61. The candidates who worked for lesser days, the certificates are produced on record. He claims ignorance about the candidates working less number of days than him. Mr. Karkare Bank Officer had committed irregularities in the interview was suspended. Ist party workman was re-examined and from his evidence, documents Exhibit W-1, W-2 are admitted in evidence. Those documents were received by him under RTI Act. In his further cross-examination, workman says that documents Exhibit W-1, 2 were sent to him is not clearly written on those documents. He denies that he had given false evidence.

10. Management filed affidavit of evidence of witness Shri Sanjay Page. In Para-2 of his affidavit, management's witness has stated that workman worked for 80 days during the period 29-3-85 to 16-6-85. Workman had not completed 240 days working. As per settlement dated 17-11-87, opportunity was given for permanent employment. Interviews were held. However his affidavit is silent, is not clear about when Ist party was called for interview. Last appointed Bhagwandas Aswani had worked for 96 days, his name is at Sl.No. 161 of the select list. Select List is valid till 31-3-97. Violation of settlement dated 17-11-87 is denied. From evidence of management's witness, select list Exhibit M-4 is admitted in evidence. In his cross-examination, management's witness stated he doesnot know workman personally. He was not working under him. He had not seen record about working days of workman. He denies that in his affidavit, working days of workman are wrongly shown. Workman had shown his working days in the application for selection. They have seen number of working days in the select list. He not seen application of the workman management's witness denies that workman had worked more than 240 days during each of the year 1992 to 1997.

11. Copy of settlement dated 17-11-87 is produced on record. Above settlement provides that temporary employees in subordinate cadre he given consideration for giving permanent appointment in the Bank, vacancies likely to arise during 1987 to 1997. Those who completed 240 days temporary service in 12 months or less after 1-7-75 (ii) those who have completed 270 days aggregate temporary service in continuous block of 36 calendar months after 1-7-75, (iii) those who have completed minimum 30 days aggregate temporary service in any calendar year after 1-7-75 or 70 days aggregate service in continuous block of 36 calendar months after 1-7-75. The evidence on record shows Ist party worked for 80 days as per above settlement in the year 1985. He was called for interview on 28-9-89. However pleadings and evidence of management's witness is not clear what was the result after interviews held in the year 1989. The select list produced on record doesnot show the year select list was prepared. Exhibit M-1, M-2 are copies of the submissions before ALC. Select list Exhibit M-4 is clear that it is not select list prepared after interview of Ist party workman in 1989 why management has not prepared select list after interview of workman in 1989, there is absolutely no explanation in pleadings and evidence of 2<sup>nd</sup> party. Therefore the evidence of Ist party workman that in said select list, candidates were included illegally appears convincing. When workman was not interviewed after September 1989,

he cannot be expected to compete with other persons included in select list Exhibit M-4. The certified copy of select list in R/125/01 is also produced in present case. Name of workman is appearing at Sl.No.328 in Exhibit M-4. Though the Ist party had not appeared for interview after 1989 and advertisement in the year 1991. Select List Exhibit M-4 cannot be said valid w.r.t. selection of workman after his interview in 1989. Management has not produced any record w.r.t. selection after interview in 1989. The allegation of Ist party workman about irregularities in selection list and illegal appointments made after his interview is reliable.

12. Learned counsel for 2<sup>nd</sup> party Shri Ashish Shrotri relies on ratio held in case of

Regional Manager, State Bank of India versus Rakesh Kumar Tewari reported in 2006(1)SCC-530. The ratio held in the case pertains to Section 25-H,G assumes that the retrenchment has been validly made. The two sections therefore operate in different fields and deal with two contradictory fact situations held if the plea in respect of Section 25 G is not put forward, the opportunity for leading evidence thereon is denied, for no amount of evidence can be looked into unless a plea is raised.

The ratio held in the case cannot be applied to present case at hand as the term of reference does not include legality of termination of workman. The term of reference are restricted to denial of regular employment to workman after he was interviewed. For above reasons, I record my finding in Point No.1 in Negative.

13. Point No.2 In view of my finding in Point No.1 action of management not providing regular employment to him after his interview is illegal. Question arise to what relief workman is entitled? As per settlement dated 17-11-87 though Ist party workman was interviewed on 28-9-89, 2<sup>nd</sup> party management has not produced any document about select list prepared after interview of workman, Ist party cannot be compared with the candidates who are included in the select list Exhibit M-4 prepared subsequent in time. The denial of regular employment to Ist party workman is in violation of Settlement of 1987 is illegal. Ist party workman is entitled for regular employment in pursuance of settlement dated 17-11-87. The present dispute is raised in the year 2001. Legal position is settled that benefit of the award should be given from the date of order of reference. The evidence of Ist party shows that he is working in readymade cloth shop. Considering facts and circumstances of the case and Ist party workman is earning wages, Ist party is entitled for regular employment with 25 % wages from the date of order of reference i.e. 19-6-01. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the management is illegal.
- (2) 2<sup>nd</sup> party is directed to provide regular employment to Ist party workman as per settlement dated 17-11-87. Ist party be paid 25 % wages w.e.f. date of reference 19-6-01 till date of award.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 182.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 122/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-41011/44/98-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 182.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 122/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of South Eastern Railway and their workmen, received by the Central Government on 13.01.2017.

[No. L-41011/44/98-IR (B-I)]

B. S. BISHT, Section Officer

## ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/122/99**

Asstt.General Secretary,  
Rail Mazdoor Union, S.E.Railway,  
House No. 12/243, Sikola Bhata,  
Premnagar, Durg (CG)

...Workman/Union

**Versus**

General Manager,  
South Eastern Railway,  
Garden Reach,  
Calcutta (WB).

Divisional Railway Manager,  
SE.Railway,  
Nagpur

...Management

**AWARD**

Passed on this 8<sup>th</sup> day of August, 2016

1. As per letter dated 8-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41011/44/98-IR(B-I). The dispute under reference relates to:

“Whether the 24 Parcel Porters as per list annexed engaged at Dongargarh Railway station under the DRM, SE.Railway Nagpur in handling of railway parcels are “Workmen” under the provisions of Section 2(s) of the ID Act, 1947? If so, whether they are to be provided with regular employment like other railway employees and are entitled to be given temporary employees and are entitled to be given temporary status and pay scale of Rs. 750-940(RPS)/ 2550-3200(UPC) with allowances and other service benefits on completion of 120/240 days of their service? If so, what should be the details of the relief the workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 55 to 67. Case of Ist party Union is that 24 workers pertaining to the dispute are its members. All the workers were engaged as parcel porters working in employment of 2<sup>nd</sup> party at Rajnandgaon Railway Station. They are covered as workman under Section 2(s) of ID Act. 2<sup>nd</sup> party management is providing rail transport services and carrying business activities too. It is an industry under Section 2(j) of ID Act. The management has administrative, supervisory and financial control over the entire activities. Management invited applications to have engagement as porters. After screening, 2<sup>nd</sup> party notified names of select candidates including those 24 parcel porters. In pursuance of circular dated 30-3-95, 12-4-95, 19-4-95 issued by Divisional Commercial Manager, SE.Railway Nagpur. The orders of appointment of those porters joined their duties at Rajnandgaon Railway Station from 9-4-95 onwards and have been exclusively engaged for handling railway parcels, booked through the railways on hourly basis. The services of those 24 parcel porters were utilised to handle railway parcel for its movement from one platform and another, from parcel office to parcel van of train and vice versa. 2<sup>nd</sup> party has control over those 24 parcel porters. They were initially engaged for 4 hours duty per day basis from 10-4-95 to 31-5-97. 2<sup>nd</sup> party maintained muster roll and paid daily wages on monthly basis on number of days worked. Payment register was maintained by the management.

3. As per circular dated 30-5-97, working hours of those parcel porters were raised from 4 hours to 8 hours per day from 1-6-97 onwards. However those porters were engaged on rational basis and given work only for 6 days in a month by reducing strength of 2 porters into one porter per day shift. 2<sup>nd</sup> party intentionally caused artificial break of 25 days in each month to deny their wages to each of the 24 parcel porters. That even the turn of each porter comes after a span of 40 days or so. That those 24 porters were not permitted by 2<sup>nd</sup> party to take any other engagement outside. No workman of Ist party was engaged in other employment. They were only dependent on present wages with 2<sup>nd</sup> party.

4. Ist party further contends that work of loading and unloading at parcel office is regular work of 2<sup>nd</sup> party. Said work was extracted by Railway from 6-24 porters only. No other person was allowed to perform said work of loading unloading parcel at Railway Station. Ist party further submits that there are two type of labours engaged for loading unloading parcels and other luggage (i)Licence coolies and (ii) Parcel Hammals or Parcel Porters. Licence coolies are given Licence numbers by the railways, they are also provided with generally red colour uniforms, name place Licence number and are being paid by passenger or public only on the basis of luggage they carried. 2<sup>nd</sup> type is

Parcel Porters who neither are required nor are allowed to carry any luggage of public or passengers while loading and unloading on trans at the station platforms. Parcel porters are not allowed to carry luggage of public. Parcel porters are engaged exclusively in parcel office at Railway station for handling parcels. Parcel porters are called Parcel Hammals. They are bound by the instructions or orders of the officials of 2<sup>nd</sup> party. They are covered as workman under Section 2(s) of ID Act. The muster roll of 24 parcel porters is maintained by Station Manager. That 24 parcel porters can be categorized as Railway employees for all purposes. They are servants under Railway defined under Railway Act. They are appointed for services of Railway work at parcel office. Relationship of master servant exists between those 24 parcel porters and the Railway. That those 24 parcel porters cannot be termed as Licence porter in Station. They are railway servants exclusively working under guidelines and directions of Station Managers. It is reiterated that all 6-24 parcel porters are covered as workman under Section 2(s) of ID Act. Ist party Union further contends that attitude of 2<sup>nd</sup> party dealing with these 24 porters in commercial department is discriminatory. Parcel porters are also regularly employed and perform similar work and duties in said departments like Engineering, Mechanical Stores etc. Monsoon Patroling gangs in Engineering Department of Railways are treated as regular employees and given CPC scales of pay after 120 days of working as casual labours. Labours deployed in stores department of railways such as Khalasis, waterman, helpers for loading and unloading trucks materials to the users department are also treated as regular employees. In various departments of railways, mechanical Electrical Signal and Telecommunication, operating, engineering, medical and commercial etc. the staff such as call boy, box boy, TTE Porter, Watchman, Gangman, peon are also paid regular scales of pay after 120 days of their working. That initially those 24 parcel porters were directed to work for 4 hours a day but in alternate month basis from 10-4-95 to 31-5-97. As per circular dated 30-5-97, those 24 parcel porters were directed to work 8 hours per day but 2<sup>nd</sup> party utilized their services on rotational basis only six days in a month, reduction of working days affected service conditions.

5. Union further contends that only 6 parcel porters are working in a day instead of requirement of minimum of 9 parcel porters are working in a day instead of requirement of minimum of 9 parcel porters. Therefore these 24 parcel porters of Ranjandgaon station are kept under waiting for their turn for duty hence the waiting days for duty should have been converted in terms of money in payment of wages as they are rightly entitled for the same.. although in Railways, Drivers, Guards, Ticket Checking staff are paid wages for the waiting days whereas these 24 parcel porters are neither paid wages for the waiting period , on the other hand, their meager wages have also been reduced from Rs. 743/- to Rs.263/- per month is violative of Article 14 & 16 of the constitution. Union further reiterate that those 24 porter working more than 4 hours per day , artificial break was caused of one month on rotational basis. 2<sup>nd</sup> party further victimized those 24 parcel porters depriving him wages for 24-25 days in a month since 1-6-97. Those 24 parcel porters are not given temporary status and pay scale of Rs. 750-940/ 2550-3200. That those 24 parcel porters have not executed any agreement on non-judicial stamp paper neither they were provided licence, badge, uniform etc. it is reiterated that those 24 parcel porters are appointed after selection. The selected list was published vide circular dated 30-3-95, 12-4-95, 19-4-95. That 2<sup>nd</sup> party never considered transfer of licence coolie. That parcel porter Shri Chandra Mohan Naik was allowed transfer to Rajnandgaon on 13-8-96. That 2<sup>nd</sup> party maintained list of rosters of duties at Rajnandgaon of all those parcel porters. They were not wearing red uniform as licence coolies. It is reiterated that 2<sup>nd</sup> party issued service certificate to Shri C.V. Ranga Rao and Shri Rajesh Supatkar parcel porters shows that they are parcel hammal and not licence coolie. 2<sup>nd</sup> party has initiated process to fill up gangman and other vacancies in Group D calling applications from general public without any reference to those 24 parcel porters. That those parcel porters be given preference as casual labour over the outsider. On such ground, Union prays that 2<sup>nd</sup> party be directed to treat those 24 workers as regular parcel porters from the date of their appointments and grant temporary status on completion of 120 days. Directions also be issued for payment of arrears of wages, salary from 10-4-95 with 18 % interest.

6. 2<sup>nd</sup> party filed Written Statement at Page 71 to 83 opposing claim of Ist party. 2<sup>nd</sup> party raised objection that Ist party is not authorized legally to represent the case of 23 members. Union has no locus to file statement of claim. There is no employer employee relationship between parties. Statement of claim is void. The claim under reference deserves to be dismissed. 2<sup>nd</sup> party denies that so called members of the Union are parcel porters as indicated in the reference. Ist party are licence porter and not parcel porter. Ist party while presenting case before the Conciliation Officer(ALC Raipur) had submitted representation and nomenclature of the case as parcel porters and the same has been reflected in the reference as parcel porters instead of licence porters. That there is no definition of parcel porters in Railway. 2<sup>nd</sup> party further submits that employees connected with statement of claim are not covered as workman under ID Act as they are licence porter as per Notification dated 8-8-94. Agreement executed between parties to the agreement, licence porters and Railway Administration, it is clear in notification that licence porter will be bound by the terms and conditions. There cannot be relationship of employer employee between parties to the agreement. Therefore claim of Ist party deserves to be dismissed. It is reiterated that Ist party workers are not covered under Section 2(S) of ID Act as they were engaged as licence porters and not as parcel porters. It is denied that Ist party were called for appointment directly by Railway Administration after holding interview and selection. In view of agreement entered between Ist party claimants and Railway that they will be working as licence porters on payment of licence fees, claim of Ist party is alleged to be false and misleading. 2<sup>nd</sup> party denies that intentionally artificial break was given

to 1st party claimants. It is submitted that Railway Administration shown courtesy in increasing number of working hours so that each licence porter gets equal job and no one should be caused injustice. That licence porters are offered work as per requirement because of less traffic. They were paid justified minimum wages as per MW Act. Licence porter are at liberty to leave work and employ themselves in any other job. That there are two types of labours loading and unloading. There are some other workers working in parcel office but they are parcel hammals. There is no definition of workman as parcel porters. That there are more than one lakh licence porters on national level out of which 300 licence porters are engaged in SE Railway. The Railway Administration submits that it will be against law. Engagement of licence porters would cause heavy burden on railway exchequer. It is submitted that 1st party tried to compare Railway staff with licence porters. Parcel porters have executed agreement and they are provided with badge in terms of agreement and minimum wages are paid to them. 2<sup>nd</sup> party submits that licence porters are transferred at specific request. Railway administration has shown mercy to them to work in another station without any transfer order. That roster has been maintained which is beneficial to licence porter, no prejudice is caused to the claimants. That several certificates alleged to have been issued in favour of licence porter is not tenable as the person was not authorized to issue such certificate. 2<sup>nd</sup> party admits that Railway Administration has initiated process for recruitment not of gangman porters but for trackman in Nagpur Division. The licence porter will be given preference at the time of screening of the candidates when they qualify in selection. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

7. 1st party Union submitted rejoinder reiterating his contentions in statement of claim pointout that various Writ Petitions were submitted before Honble Apex Court under Article 32 of the constitution for absorption of 162 parcel porter working or contract basis. That 2<sup>nd</sup> party is deliberately misleading mixing the issue of licence porter with 23 parcel porters working at Dongargarh. 1st party reiterates that all those 23 members were neither licence coolie rather they were only parcel porters. They had not executed the agreement as per notification dated 8-8-94. It is reiterated that those parcel porters are workman and relationship of employer employee is existing.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the 24 Parcel Porters as per list annexed engaged at Dongargarh Railway station under the DRM, SE.Railway Nagpur in handling of railway parcels are "Workmen" under the provisions of Section 2(s) of the ID Act, 1947?	In Affirmative
(ii) If so, whether they are to be provided with regular employment like other railway employees and are entitled to be given temporary employees and are entitled to be given temporary status and pay scale of Rs. 750-940(RPS)/ 2550-3200(UPC) with allowances and other service benefits on completion of 120/240 days of their service	In Negative
(iii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

## REASONS

9. Parties are in dispute whether 24 parcel porters connected with dispute under reference are covered as workman under Section 2(s) of ID Act. Union has pleaded that all those 24 porter shown in list were working as parcel porters whereas 2<sup>nd</sup> party in its Written Statement has contented that they were not working as parcel porters but they were working as licence coolies. Claimants are not covered under Section 2(s) of ID Act. Identical affidavit of evidence is filed by Shri N.V.Subbarao, P.V.Srinivasacharya, C.V.Ranga Rao, Dashrath, Mahendra Maharana, Anup Yadav and Chote Sab. The affidavit of evidence of Shri N.V.Subbarao in Para 5 is devoted that Railway Administration invited applications from the general public in the year 1995 for engaging as porters for handling the railway parcels from railway station to railway parcel office, from parcel office to railway luggage compartment. That after 2 years from 1997, Railway Administration raised working hours for porters from 4 hours to 8 hours per day per shift but reduced the number of working days to 6 days on rotational basis. In para 10 of his affidavit, he has narrated points of difference between licence porter and parcel porters.

10. Shri Shrinivas, C.V.Ranga Rao, Dashrath, Mahendra Maharana, Anup Yadav and Chote Sab, Ramswaroop and A.K.Tudu in their affidavit of evidence have stated that claimants were working as parcel porters on daily wages from 1995. They were paid daily wages. Claimants in their cross examination have admitted they were working 4 days in a

month. They were paid daily wages at end of month. At the time of recording their evidence, they were working one day in a month. Appointment letter was not issued to them, they were working as per rotational list. Documents are produced about payment of wages to them at different pages of Annexure A.

11. Management filed affidavit of witness Shri K.V.R.Murthy has stated workmen were working 6 days in a month on rotation were paid handling charges. In Written Statement filed by management, it is pleaded that initially 1st party claimants were allowed working 4 days on rotational basis. The working hours were enhanced to 8 hours in 1997. 1st party claimants were paid on daily wage basis.

Section 2(s) of ID Act provides-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.”

12. The evidence on record shows that 1st party workmen were also working on rotational basis initially 4 days in a month increased to 6 days in a month. They were paid wages on daily wage basis established that 1st party claimants are covered as claimant under Section 2(s) of ID Act. For above reasons, I record my finding in Point no. 1 in Affirmative.

13. Point No.2 pertains to whether the 1st party are entitled to be provided with regular employment like Railway employees and they are entitled to temporary status and pay scale benefit on completion of 120/240 days working. Evidence of affidavit filed by all claimant. They claimed that they were working from 1995 as parcel porters at Dongargarh Railway Station. That applications were submitted by them. After his selection, they were working as parcel porters. Claimant Shri V.L.Srivastava in his cross examination says appointment letter was not received by him. Work was assigned as per the list at Railway Station, Dongargarh. Presently he was working 4 days in a month. When work is not available in department, there is no prohibition for doing other work. Shri C.V.Rangarao in his cross examination says appointment letter is not received by him, he is working as per work assigned as per list. Present he works 4 days in a month. When work is not available in the department, there is no prohibition for doing other work. Similar evidence is given in cross-examination by Dashrath, Mahendra, Anup Yadav, Chote Sab.

14. Management's witness Shri K.V.R.Murthy filed affidavit of evidence saying that claimants are licenced coolies but on humanitarian ground, they were utilized to load unload passenger luggage and parcel to mend their earnings. Considering the facts that earnings of licence porters have been reduced, they were given less work of 6 days in a month on rotation basis, they were paid handling charges. That licence porters are not recruited on Railway. They are recruited to carry passengers luggage as per the policy. Licence porters pay monthly fee Rs.2/- In his cross examination, management's witness says during 2005 to 2007, he was working as Divisional Commercial Manager at Nagpur. He claims ignorance under which notification, services of 22 workmen were taken. On basis of available record, he says that licenced porter are not recruited. One committee used to make selection. Licence porter execute agreement in prescribed proforma. There is no categorization of SC ST in selection of licence porter. Management's witness was unable to tell from what time they stop taking work of licence porters from claimants. In zerox copy of receipt produced in affidavit, name of parcel porter is not written. Management's witness was unable to tell whether Paper No. 171 was of which original document of the department. In case the licence porter are more than 50, they get benefit of shelter and medical facilities. He claims ignorance whether claimant related to the dispute were given porter's licence and still working. Evidence of management's witness is devoted on the point that 1st party claimants were working as licence coolies and not parcel porters. Witnesses Ramswaroop Sahu and A.K.Tudu in their affidavit of evidence filed subsequent supported claim of 1st party claimants that they were working as parcel porters, doing the work of loading, unloading parcels etc. they had worked more than 240 days during the period 95 to 2005. Ramswaroop in Para 6 of his affidavit says that services of 1st party claimants were terminated on 31-8-5 without following rules. His evidence in cross-examination shows that appointment orders were not issued to claimants. He claims ignorance whether his name was sponsored through Employment Exchange. He denies that he had not given written exam of the department. He claims ignorance whether prior licence is required for working in the department. His work was concerned with loading unloading parcel. He was paid wages for the working days. He was working 6 days in a month by rotation. He denies that he was allowed to work on payment of licence fees. He admits that he has worked more than 120 days. His evidence appears improvement of evidence of claimants. Any of the claimants in their affidavit of evidence have not claimed that they worked more than 120/240 days of each of the year. Their evidence in cross examination of all claimants shows they were initially working 4 days in a month by rotation and 6 days in a month by rotation. The claimants have produced details of the muster rolls taking inspection of the documents along with their photo and affidavits. However claimant did not take care to adduce valid evidence to prove this bunch. It appears the working days shown of the respective claimants are less than 120 days and therefore it may be the reason

Ist party did not adduce evidence to get proved said muster rolls or payments of salary. The argument advanced by learned counsel for Ist party Shri P.Choubey that documents requested from management were not produced and adverse inference be drawn cannot be accepted. Order sheet dated 26-6-01 shows that inspection of salary sheet and muster roll for the year 95 to 2001 was allowed and Annexure A-1 to A-18 based on said inspection are produced in the case. Ist party also produced Annexure A-6 to A-13 copies of muster roll of parcel porters supplied by station master. However Ist party did not adduce evidence to get proved those documents from evidence. It appears that attendance of claimants is marked by rotation is less than 120 days or 240 days and the Ist party claimants would not have been supported therefore no efforts were made to get those documents proved.

15. Learned counsel for Ist party Shri P.Choubey argued that similar matter is decided by CGIT Nagpur, copy of award passed in R/36/02 is produced on record. It is not in dispute that said award was confirmed by Hon'ble High Court and SLP filed before Apex Court was rejected. Shri P.Choubey learned counsel for Ist party submits that similar view should be taken in the matter.

Para 18 of the award finds reference that management examined Shri M.R.Vinayagum a retired Assistant Personal Officer stated that the DRM, SC.Railway has nominated him as one of the screening committee members and he has taken screening test of the licensed porters In all 186 candidates were selected as licensed porters Hamals to cope up with requirement of the Division. In para-19 of the award, witness admitted that for recruitment of large number of 186 licensed porters the candidates from all over India had gathered at Kamptee. In para 20 of the award witness Shri K.V.R.Murthi Assistant Commercial Manager, SEC RailwayNagpur had taken stand that candidate selected in recruitment process but they were asked to handle the railway parcels. In para 33 of the award, as management did not produce attendance register deliberately, adverse inference would be drawn that management is deliberately not producing attendance register.

The evidence adduced in present case is different. In present case, inspection of documents was allowed and Ist party has produced bunch of documents A-1 to A-18 regarding payment of wages to Ist party claims and zerox copies of muster roll Annexure A-6 to A-13. However Union has not adduced evidence to prove those documents. All the claimants in their cross have admitted that they were working for 4 days or 6 days by rotation. The working days of Ist party claimants would hardly come to 48 or 72 in a calendar year. The evidence in present case is similar to the evidence in R/36/02 decided by CGIT Nagpur therefore the evidence on record is clear that workman themselves have admitted they were working 4-6 days in a month by rotation, they have not completed 120/240 days working in any of the calendar years. Therefore similar view cannot be taken in present case.

16. Ist party has not produced any evidence w.r.t. claimants were selected as parcel porters. The list under which they were working is not produced. The written notes of argument are submitted by both parties. Ist party claimants submits that evidence of Shri A.K.Tudu establish 240 days working of the claimants cannot be accepted as Ist party claimants themselves have admitted in their cross examination working 4 hours in a day on rotation 6 days in a month00. Shri A.K.Tudu is giving evidence in 2015 after his retirement in 2011. He was not working along with workman neither he has maintained any record about their working period.

17. Management has not produced the agreements of licensed porters, only proforma is produced. Condition No. 7 is proforma agreement clearly provide that work of parcel porters would be extracted from licence coolies. 2<sup>nd</sup> party in his notes of argument has emphasized Ist party claimants have not completed 20 days or 120 days working evidence discussed above cannot establish that the claimants had worked either 120 days or 240 days working. Evidence discussed above cannot established that the claimants had worked either 120days or 240 days in a year. Therefore the benefits of Para 2001 of Railway Manual Chapter 26 on completion of 120 days working claimants are entitled to benefit of minimum scale of pay cannot be allowed to the claimants.

18. Incidentally learned counsel for Ist party Shri P.Choubey during course of argument submits that complaint under Section 33-A of ID Act is filed. The service conditions of Ist party claimants were changed. Though the complaint is filed at Page 143 to 149 on the allegation that as per circular dated 9-5-02 reveals that licence porter should not be utilized for parcel handling work and handling of parcel should be done on one day rotation basis. No reply was filed by management. Even if whole complaint is accepted, it pertains to change of service conditions of licence porters that they should not be allowed to work more than one hour as parcel porters. The allegations in the complaint are not pursued by Ist party and absolutely no evidence is adduced on the point. It appears that Union has not pursued the complaint. Violation of Section 33 is not established. Fresh complaints are filed by Ist party bearing No. A/3/15, A/4/15. Shri P.Choubey learned counsel for complainant emphasized that present matter may also be decided along with this complaint. It is not possible. Perusal of record shows that after evidence was adduced by parties, notes of argument are submitted in the year 2008 itself. The directions were given by High Court to decide the matter expeditiously. As the parties again moved applications and adduced evidence, the adjudication of the matter was delayed. I do not find substance in argument advanced by Shri P.Choubey.

19. Shri P.Choubey relies on ratio held in case of

Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd versus Shri Ram Gopal Sharma and others reported in AIR 2002 SC 643. Their Lordship held Section 33(B) of ID Act- non approval of order of dismissal or failure to make application under Section 33(2)(b) seeking approval renders dismissal inoperative.

In present case, statement of claim and evidence of Ist party is silent about dismissal of workman. Only witness Ram Swaroop and Tudu in his affidavit of evidence has stated that claimants are terminated on 31-8-2015. He has not produced any documentary evidence about termination of services. 2<sup>nd</sup> party has not pleaded about termination of services of claimants therefore ratio held in above case cannot be applied to case at hand.

Judgment in matter of All India Railway Parcel and goods versus Union of India and others reported by Apex Court is also brought to my notice. In said judgment, the services of parcel porters working under contractors for more than 240 days directions were issued for their absorption.

In present case, evidence of Ist party claimants about their selection as parcel porters and working is not cogent. They were working about 72 days in a year. They have not produced appointment letters as parcel porters. Ratio held in the case cannot be applied to case at hand.

20. Reliance is also placed on ratio held in case of

National Federation of Railway versus Union of India and others reported in Writ Petition 507 of 1992. Their Lordship considering report submitted by ALC(C) and continuous working as Railway Parcel porters as contract labour, directions were issued for absorption.

The facts of present case are not comparable as Ist party workman have failed to establish that they were appointed as parcel porters as per the notification. The Notification is not produced. As per their own evidence and affidavit filed in the annexure, they worked less than 72 days per year. Therefore ratio held in above cited case cannot be applied to case at hand.

21. Shri P.Choubey has further relied ratio held in case between

Amarkant Rai versus State of Bihar and others reported in Civil Appeal No. 2835 of 2015. Their Lordship dealing with ratio held in Umadevi's case. Para 53 of the judgment observed irregular appointment of employees who have worked for more than 10 years should be considered on merits and steps to be taken one time measure to regularize them. In para 12, their Lordship have further discussed that appointment of such employee should not be illegal even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments are considered to be irregular.

In present case, from evidence of Ist party their appointment as parcel porter is not established. However they were working as parcel porters 4 hours by monthly rotation and after 1997, they were working 6 days in a month, they have not completed 120 days working or 240 days working during any of the year. They have not discharged the burden about valid appointment as parcel porter. Therefore ratio in above cited case cannot be applied to case at hand.

22. Shri P.Choubey also relied on ratio held in case between

ONGC Ltd versus Petroleum Coal Labour Union and others reported in Civil Appeal No.3727 of 2015 decided by Apex Court on 17-4-2015. Ratio held in the case pertains to in absence of plea of unfair labour practice, the powers of Labour Court to deal with the mischief can be exercised.

In present case, when the evidence on record shows the Ist party workman were working intermittently from 1995 onwards. The reference is made as per order dated 8-3-99. Intermittent working for few years as portal cannot establish unfair labour practice under Item 10 Schedule 5 of ID Act. Therefore ratio cannot be applied to present case at hand. From reasons discussed above, I find that Ist party claimants have not established their right that they should be provided regular work/employment as Railway Employees claimed by them. Point No.2 is therefore answered in Negative.

23. In the result, award is passed as under:-

- (1) Ist party claimants are workmen under Section 2(s) of ID Act. However they are not entitled for regular work and benefit of pay scale claimed by them.
- (2) Workmen are not entitled to any relief.

नई दिल्ली, 13 जनवरी, 2017

**का.आ. 183.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 132/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.01.2017 को प्राप्त हुआ था।

[सं. एल-41011/45/98-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th January, 2017

**S.O. 183.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of South Eastern Railway and their workmen, received by the Central Government on 13.01.2017.

[No. L-41011/45/98-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/132/99

Asstt.General Secretary,  
Rail Mazdoor Union, S.E.Railway,  
House No. 12/243, Sikola Bhata,  
Premnagar, Durg (CG)

...Workman/Union

#### Versus

General Manager,  
South Eastern Railway,  
Garden Reach,  
Calcutta (WB).

Divisional Railway Manager,  
SE.Railway,  
Nagpur

...Management

#### AWARD

Passed on this 8<sup>th</sup> day of August 2016

1. As per letter dated 17-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-41011/45/98-IR(B-I). The dispute under reference relates to:

“Whether the 29 Parcel Porters as per list annexed engaged at Rajnandgaon Railway station under the DRM, SE.Railway Nagpur in handling of railway parcels are “Workmen” under the provisions of Section 2(s) of the ID Act, 1947? If so, whether they are to be provided with regular employment like other railway employees and are entitled to be given temporary status and pay scale of Rs. 750-940(RPS)/ 2550-3200(UPC) with allowances and other service benefits on completion of 120/240 days of their service? If so, what should be the details of the relief the workmen are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 61 to 73. Case of Ist party Union is that 29 workers pertaining to the dispute are its members. All the workers were engaged as parcel porters working in employment of 2<sup>nd</sup> party at Rajnandgaon Railway Station. They are covered as workman under Section 2(s) of ID Act. 2<sup>nd</sup> party management is providing rail transport services and carrying business activities too. It is an industry under Section 2(j) of ID Act. The management has administrative, supervisory and financial control over the entire activities. Management invited applications to have engagement as porters. After screening, 2<sup>nd</sup> party notified names of select candidates including those 29 parcel porters. In pursuance of circular dated 30-3-95, 12-4-95, 19-4-95 issued by Divisional Commercial Manager, SE.Railway Nagpur. The orders of appointment of those

porters joined their duties at Rajnandgaon Railway Station from 9-4-95 onwards and have been exclusively engaged for handling railway parcels, booked through the railways on hourly basis. The services of those 29 parcel porters were utilised to handle railway parcel for its movement from one platform and another, from parcel office to parcel van of train and vice versa. 2<sup>nd</sup> party has control over those 29 parcel porters. They were initially engaged for 4 hours duty per day basis from 10-4-95 to 31-5-97. 2<sup>nd</sup> party maintained muster roll and paid daily wages on monthly basis on number of days worked. Payment register was maintained by the management.

3. As per circular dated 30-5-97, working hours of those parcel porters were raised from 4 hours to 8 hours per day from 1-6-97 onwards. However those porters were engaged on rational basis and given work only for 6 days in a month by reducing strength of 2 porters into one porter per day shift. 2<sup>nd</sup> party intentionally caused artificial break of 25 days in each month to deny their wages to each of the 29 parcel porters. That even the turn of each porter comes after a span of 40 days or so. That those 29 porters were not permitted by 2<sup>nd</sup> party to take any other engagement outside. No workman of 1st party was engaged in other employment. They were only dependent on present wages with 2<sup>nd</sup> party.

4. 1st party further contends that work of loading and unloading at parcel office is regular work of 2<sup>nd</sup> party. Said work was extracted by Railway from 6-29 porters only. No other person was allowed to perform said work of loading unloading parcel at Railway Station. 1st party further submits that there are two type of labours engaged for loading unloading parcels and other luggage (i)Licence coolies and (ii) Parcel Hammals or Parcel Porters. Licence coolies are given Licence numbers by the railways, they are also provided with generally red colour uniforms, name place Licence number and are being paid by passenger or public only on the basis of luggage they carried. 2<sup>nd</sup> type is Parcel Porters who neither are required nor are allowed to carry any luggage of public or passengers while loading and unloading on trans at the station platforms. Parcel porters are not allowed to carry luggage of public. Parcel porters are engaged exclusively in parcel office at Railway station for handling parcels. Parcel porters are called Parcel Hammals. They are bound by the instructions or orders of the officials of 2<sup>nd</sup> party. They are covered as workman under Section 2(s) of ID Act. The muster roll of 29 parcel porters is maintained by Station Manager. That 29 parcel porters can be categorized as Railway employees for all purposes. They are servants under Railway defined under Railway Act. They are appointed for services of Railway work at parcel office. Relationship of master servant exists between those 29 parcel porters and the Railway. That those 29 parcel porters cannot be termed as Licence porter in Station. They are railway servants exclusively working under guidelines and directions of Station Managers. It is reiterated that all 6-29 parcel porters are covered as workman under Section 2(s) of ID Act. 1st party Union further contends that attitude of 2<sup>nd</sup> party dealing with 6-29 porters in commercial department is discriminatory. Parcel porters are also regularly employed and performed similar work and duties in said departments like Engineering, Mechanical Stores etc. Monsoon Patroling gangs in Engineering Department of Railways are treated as regular employees and given CPC scales of pay after 120 days of working as casual labours. Labours deployed in stores department of railways such as Khalasis, waterman, helpers for loading and unloading trucks materials to the users department are also treated as regular employees. In various departments of railways, mechanical Electrical Signal and Telecommunication, operating, engineering, medical and commercial etc. the staff such as call boy, box boy, TTE Porter, Watchman, Gangman, peon are also paid regular scales of pay after 120 days of their working. That initially those 29 parcel porters were directed to work for 4 hours a day but in alternate month basis from 10-4-95 to 31-5-97. As per circular dated 30-5-97, those 29 parcel porters were directed to work 8 hours per day but 2<sup>nd</sup> party utilized their services on rotational basis only six days in a month, reduction of working days affected service conditions.

5. Union further contends that only 6 parcel porters are working in a day instead of requirement of minimum of 9 parcel porters are working in a day instead of requirement of minimum of 9 parcel porters. Therefore these 29 parcel porters of Ranjandgaon station are kept under waiting for their turn for duty hence the waiting days for duty should have been converted in terms of money in payment of wages as they are rightly entitled for the same.. although in Railways, Drivers, Guards, Ticket Checking staff are paid wages for the waiting days whereas these 29 parcel porters are neither paid wages for the waiting period , on the other hand, their meager wages have also been reduced from Rs. 743/- to Rs.263/- per month is violative of Article 14 & 16 of the constitution. Union further reiterate that those 29 porter working more than 4 hours per day , artificial break was caused of one month on rotational basis. 2<sup>nd</sup> party further victimized those 29 parcel porters depriving him wages for 24-25 days in a month since 1-6-97. Those 29 parcel porters are not given temporary status and pay scale of Rs. 750-940/ 2550-3200. That those 29 parcel porters have not executed any agreement on non-judicial stamp paper neither they were provided licence, badge, uniform etc. it is reiterated that those 29 parcel porters are appointed after selection. The selected list was published vide circular dated 30-3-95, 12-4-95, 19-4-95. That 2<sup>nd</sup> party never considered transfer of licence coolie. That parcel porter Shri Chandra Mohan Naik was allowed transfer to Rajnandgaon on 13-8-96. That 2<sup>nd</sup> party maintained list of rosters of duties at Rajnandgaon of all those parcel porters. They were not wearing red uniform as licence coolies. It is reiterated that 2<sup>nd</sup> party received service certificate to Shri C.V. Ranga Rao and Shri Rajesh Supatkar parcel porters shows that they are parcel hammal and not licence coolie. 2<sup>nd</sup> party has initiated process to fill up gangman and other vacancies in Group D calling applications from general public without any reference to those 29 parcel porters. That those parcel porters be given preference as casual labour over the outsider. On such ground, Union prays that 2<sup>nd</sup> party be directed to treat

those 29 workers as regular parcel porters from the date of their appointments and grant temporary status on completion of 120 days. Directions also be issued for payment of arrears of wages, salary from 10-4-95 with 18 % interest.

6. 2<sup>nd</sup> party filed Written Statement at Page 85 to 97 opposing claim of 1<sup>st</sup> party. 2<sup>nd</sup> party raised objection that 1<sup>st</sup> party is not authorized legally to represent the case of 23 members. Union has no locus to file statement of claim. There is no employer employee relationship between parties. Statement of claim is void. The claim under reference deserves to be dismissed. 2<sup>nd</sup> party denies that so called members of the Union are parcel porters as indicated in the reference. 1<sup>st</sup> party are licence porter and not parcel porter. 1<sup>st</sup> party while presenting case before the Conciliation Officer(ALC Raipur) had submitted representation and nomenclature of the case as parcel porters and the same has been reflected in the reference as parcel porters instead of licence porters. That there is no definition of parcel porters in Railway. 2<sup>nd</sup> party further submits that employees connected with statement of claim are not covered as workman under ID Act as they are licence porter as per Notification dated 8-8-94. Agreement executed between parties to the agreement, licence porters and Railway Administration, it is clear in notification that licence porter will be bound by the terms and conditions. There cannot be relationship of employer employee between parties to the agreement. Therefore claim of 1<sup>st</sup> party deserves to be dismissed. It is reiterated that 1<sup>st</sup> party workers are not covered under Section 2(S) of ID Act as they were engaged as licence porters and not as parcel porters. It is denied that 1<sup>st</sup> party were called for appointment directly by Railway Administration after holding interview and selection. In view of agreement entered between 1<sup>st</sup> party claimants and Railway that they will be working as licence porters on payment of licence fees, claim of 1<sup>st</sup> party is alleged to be false and misleading. 2<sup>nd</sup> party denies that intentionally artificial break was given to 1<sup>st</sup> party claimants. It is submitted that Railway Administration shown courtesy in increasing number of working hours so that each licence porter gets equal job and no one should be caused injustice. That licence porters are offered work as per requirement because of less traffic. They were paid justified minimum wages as per MW Act. Licence porter are at liberty to leave work and employ themselves in any other job. That there are two types of labours loading and unloading. There are some other workers working in parcel office but they are parcel hammals. There is no definition of workman as parcel porters. That there are more than one lakh licence porters on national level out of which 300 licence porters are engaged in SE Railway. The Railway Administration submits that it will be against law. Engagement of licence porters would cause heavy burden on railway exchequer. It is submitted that 1<sup>st</sup> party tried to compare Railway staff with licence porters. Parcel porters have executed agreement and they are provided with badge in terms of agreement and minimum wages are paid to them. 2<sup>nd</sup> party submits that licence porters are transferred at specific request. Railway administration has shown mercy to them to work in another station without any transfer order. That roster has been maintained which is beneficial to licence porter, no prejudice is caused to the claimants. That several certificates alleged to have been issued in favour of licence porter is not tenable as the person was not authorized to issue such certificate. 2<sup>nd</sup> party admits that Railway Administration has initiated process for recruitment not of gangman porters but for trackman in Nagpur Division. The licence porter will be given preference at the time of screening of the candidates when they qualify in selection. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

7. 1<sup>st</sup> party Union submitted rejoinder at Page 107 to 129 reiterating his contentions in statement of claim pointing out that various Writ Petitions were submitted before Honble Apex Court under Article 32 of the constitution for absorption of 162 parcel porter working or contract basis. That 2<sup>nd</sup> party is deliberately misleading mixing the issue of licence porter with 23 parcel porters working at Dongargarh. 1<sup>st</sup> party reiterates that all those 23 members were neither licence coolie rather they were only parcel porters. They had not executed the agreement as per notification dated 8-8-94. It is reiterated that those parcel porters are workman and relationship of employer employee is existing.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the 29 Parcel Porters as per list annexed engaged at Rajnandgaon Railway station under the DRM, SE.Railway Nagpur in handling of railway parcels are "Workmen" under the provisions of Section 2(s) of the ID Act, 1947?	In Affirmative
(ii) If so, whether they are to be provided with regular employment like other railway employees and are entitled to be given temporary status and pay scale of Rs. 750-940(RPS)/ 2550-3200(UPC) with allowances and other service benefits on completion of 120/240 days of their service?	In Negative
(iii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

## REASONS

9. Parties are in dispute whether 29 parcel porters connected with dispute under reference are covered as workman under Section 2(s) of ID Act. Union has pleaded that all those 29 porter shown in list were working as parcel porters whereas 2<sup>nd</sup> party in its Written Statement has contented that they were not working as parcel porters but they were working as licence coolies. Claimants are not covered under Section 2(s) of ID Act. Identical affidavit of evidence is filed by Shri N.V.Subbarao, Govindram, M.Purushottam, Miluram Sahu, Mukund Rao Ramteke & Narayan Raksiya The affidavit of evidence of Shri N.V.Subbarao in Para 5 is devoted that Railway Administration invited applications from the general public in the year 1995 for engaging as porters for handling the railway parcels from railway station to railway parcel office, from parcel office to railway luggage compartment. That after 2 years from 1997, Railway Administration raised working hours for porters from 4 hours to 8 hours per day per shift but reduced the number of working days to 6 days on rotational basis. In para 10 of his affidavit, he has narrated points of difference between licence porter and parcel porters.

10. Govindram, M.Purushottam, Miluram Sahu, Mukund Rao Ramteke & Narayan Raksiya in their affidavit of evidence have stated that claimants were working as parcel porters on daily wages from 1995. They were paid daily wages. Claimants in their cross examination have admitted they were working 4 days in a month. They were paid daily wages at end of month. At the time of recording their evidence, they were working one day in a month. Appointment letter was not issued to them, they were working as per rotational list. Documents are produced about payment of wages to them at different pages of Annexure A.

11. Management's witness Shri K.V.R.Murthy in his affidavit of evidence has also told that Ist party claimants were given work for 6 days in a month and paid handling charges. Management filed affidavit of witness Shri JD.Bhaskar Rao and Shankar Rao have also deposed about working with 2<sup>nd</sup> party and in parcel office initially 8 hours per day on rotational basis and after April 2004 for 8 hours in three shifts daily.

Section 2(s) of ID Act provides-

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute.”

12. The evidence on record shows that Ist party workmen were also working on rotational basis initially 4 days in a month increased to 6 days in a month. They were paid wages on daily wage basis established that Ist party claimants are covered as claimant under Section 2(s) of ID Act. For above reasons, I record my finding in Point no. 1 in Affirmative.

13. Point No.2 pertains to whether the Ist party are entitled to be provided with regular employment like Railway employees and they are entitled to temporary status and pay scale benefit on completion of 120/240 days working. Identical affidavit of evidence is filed by Shri N.V.Subbarao, Govindram, M.Purushottam, Miluram Sahu, Mukund Rao Ramteke & Narayan Raksiya The affidavit of evidence of Shri N.V.Subbarao in Para 5 is devoted that Railway Administration invited applications from the general public in the year 1995 for engaging as porters for handling the railway parcels from railway station to railway parcel office, from parcel office to railway luggage compartment. That after 2 years from 1997, Railway Administration raised working hours for porters from 4 hours to 8 hours per day per shift but reduced the number of working days to 6 days on rotational basis. In para 10 of his affidavit, he has narrated points of difference between licence porter and parcel porters. Govindram, M.Purushottam, Miluram Sahu, Mukund Rao Ramteke & Narayan Raksiya in their affidavit of evidence have stated that claimants were working as parcel porters on daily wages from 1995. They were paid daily wages. Claimants in their cross examination have admitted they were working 4 days in a month.

14. Application for production of documents was filed on 27-2-01. As per ordersheet dated 26-6-01 & 29-8-01, inspection of documents was allowed. Ist party workman produced bunch of documents Annexure A-1 to A-18 showing working days and hour of working of all those workmen during the period 1995 to June 2001. Photography of claimants workmen are also filed along with affidavit of respective claimants. The working days of Ist party workmen are not more than 72 days in a year. Wages were paid to them @ Rs.48.95, Rs.294 for the last month.

15. Management's witness Shri K.V.R.Murthy filed affidavit of evidence saying that claimants are licenced coolies but on humanitarian ground, they were utilized to load unload passenger luggage and parcel to mend their earnings. Considering the facts that earnings of licence porters have been reduced, they were given less work of 6 days in a month on rotation basis, they were paid handling charges. That licence porters are not recruited on Railway. They are recruited to carry passengers luggage as per the policy. Licence porters pay monthly fee Rs.2/- In his cross examination, management's witness says during 2005 to 2007, he was working as Divisional Commercial Manager at

Nagpur. He claims ignorance under which notification, services of 22 workmen were taken. On basis of available record, he says that licensed porter are not recruited. One committee used to make selection. Licence porter execute agreement in prescribed proforma. There is no categorization of SC ST in selection of licence porter. Management's witness was unable to tell from what time they stop taking work of licence porters from claimants. In zerox copy of receipt produced in affidavit, name of parcel porter is not written. Management's witness was unable to tell whether Paper No. 171 was of which original document of the department. In case the licence porter are more than 50, they get benefit of shelter and medical facilities. He claims ignorance whether claimant related to the dispute were given porter's licence and still working. Evidence of management's witness is devoted on the point that Ist party claimants were working as licence coolies and not parcel porters. Witnesses Ramswaroop Sahu and A.K.Tudu in their affidavit of evidence filed subsequent supported claim of Ist party claimants that they were working as parcel porters, doing the work of loading, unloading parcels etc. they had worked more than 240 days during the period 95 to 2005. Ramswaroop in Para 6 of his affidavit says that services of Ist party claimants were terminated on 31-8-5 without following rules. His evidence in cross-examination shows that appointment orders were not issued to claimants. He claims ignorance whether his name was sponsored through Employment Exchange. He denies that he had not given written exam of the department. He claims ignorance whether prior licence is required for working in the department. His work was concerned with loading unloading parcel. He was paid wages for the working days. He was working 6 days in a month by rotation. He denies that he was allowed to work on payment of licence fees. He admits that he has worked more than 120 days. His evidence appears improvement of evidence of claimants. Any of the claimants in their affidavit of evidence have not claimed that they worked more than 120/240 days of each of the year. Their evidence in cross examination of all claimants shows they were initially working 4 days in a month by rotation and 6 days in a month by rotation. The claimants have produced details of the muster rolls taking inspection of the documents along with their photo and affidavits. However claimant did not take care to adduce valid evidence to prove this bunch. It appears the working days shown of the respective claimants are less than 120 days and therefore it may be the reason Ist party did not adduce evidence to get proved said muster rolls or payments of salary. The argument advanced by learned counsel for Ist party Shri P.Choubey that documents requested from management were not produced and adverse inference be drawn cannot be accepted. Order sheet dated 26-6-01 shows that inspection of salary sheet and muster roll for the year 95 to 2001 was allowed and Annexure A-1 to A-18 based on said inspection are produced in the case. Ist party also produced Annexure A-6 to A-13 copies of muster roll of parcel porters supplied by station master. However Ist party did not adduce evidence to get proved those documents from evidence. It appears that attendance of claimants is marked by rotation is less than 120 days or 240 days and the Ist party claimants would not have been supported therefore no efforts were made to get those documents proved.

16. Learned counsel for Ist party Shri P.Choubey argued that similar matter is decided by CGIT Nagpur, copy of award passed in R/36/02 is produced on record. It is not in dispute that said award was confirmed by Hon'ble High Court and SLP filed before Apex Court was rejected. Shri P.Choubey learned counsel for Ist party submits that similar view should be taken in the matter.

Para 18 of the award finds reference that management examined Shri M.R.Vinayagum a retired Assistant Personal Officer stated that the DRM, SC.Railway has nominated him as one of the screening committee members and he has taken screening test of the licensed porters In all 186 candidates were selected as licensed porters Hamals to cope up with requirement of the Division. In para-19 of the award, witness admitted that for recruitment of large number of 186 licensed porters the candidates from all over India had gathered at Kamptee. In para 20 of the award witness Shri K.V.R.Murthi Assistant Commercial Manager, SEC RailwayNagpur had taken stand that candidate selected in recruitment process but they were asked to handle the railway parcels. In para 33 of the award, as management did not produce attendance register deliberately, adverse inference would be drawn that management is deliberately not producing attendance register.

The evidence adduced in present case is different. In present case, inspection of documents was allowed and Ist party has produced bunch of documents A-1 to A-18 regarding payment of wages to Ist party claims and zerox copies of muster roll Annexure A-6 to A-13. However Union has not adduced evidence to prove those documents. All the claimants in their cross have admitted that they were working for 4 days or 6 days by rotation. The working days of Ist party claimants would hardly come to 48 or 72 in a calendar year. The evidence in present case is similar to the evidence in R/36/02 decided by CGIT Nagpur therefore the evidence on record is clear that workman themselves have admitted they were working 4-6 days in a month by rotation, they have not completed 120/240 days working in any of the calendar years. Therefore similar view cannot be taken in present case.

17. Ist party has not produced any evidence w.r.t. claimants were selected as parcel porters. The list under which they were working is not produced. The evidence of D.Bhaskar Rao and R.Shankar Rao about Ist party workman continuously working after April 2004 till 31-8-05 is not reliable as any documents in that regard are not produced. The complaint under Section 33-A was filed on the ground that working of licence coolies for handling parcel was reduced to one hour during pendency of reference proceeding, it is difficult to believe that all workmen were allowed to continuously work 8 hours per day from April 04 to 31-8-05.

18. Management has not produced the agreements of licenced porters, only proforma is produced. Condition No. 7 is proforma agreement clearly provide that work of parcel porters would be extracted from licence coolies. 2<sup>nd</sup> party in his notes of argument has emphasized 1st party claimants have not completed 20 days or 120 days working evidence discussed above cannot establish that the claimants had worked either 120 days or 240 days working. Evidence discussed above cannot establish that the claimants had worked either 120 days or 240 days in a year. Therefore the benefits of Para 2001 of Railway Manual Chapter 26 on completion of 120 days working claimants are entitled to benefit of minimum scale of pay cannot be allowed to the claimants.

19. Incidentally learned counsel for 1st party Shri P.Choubey during course of argument submits that complaint under Section 33-A of ID Act is filed on 5-3-03. Said complaint is accompanied with Annexure I letter dated 9-5-02, Annexure II copy of legal notice. Thd documents Annexure A-6 to A-13 copies of muster rolls for the months January to May 2003 are produced with said complaint. Annexure R-1 is proforma of notification for engagement of licence porter. Annexure II is specimen copy of agreement of terms and conditions. The service conditions of 1st party claimants were changed. No reply was filed by management. Even if whole complaint is accepted, it pertains to change of service conditions of licence porters that they should not be allowed to work more than one hour as parcel porters. The allegations in the complaint are not pursued by 1st party and absolutely no evidence is adduced on the point. It appears that Union has not pursued the complaint. Violation of Section 33 is not established. Fresh complaints are filed by 1st party bearing No. A/3/15, A/4/15. Shri P.Choubey learned counsel for complainant emphasized that present matter may also be decided along with this complaint. It is not possible. Perusal of record shows that after evidence was adduced by parties, notes of argument are submitted in the year 2008 itself. The directions were given by High Court to decide the matter expeditiously. As the parties again moved applications and adduced evidence, the adjudication of the matter was delayed. I donot find substance in argument advanced by Shri P.Choubey.

20. Shri P.Choubey relies on ratio held in case of

Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd versus Shri Ram Gopal Sharma and others reported in AIR 2002 SC 643. Their Lordship held Section 33(B) of ID Act- non approval of order of dismissal or failure to make application under Section 33(2)(b) seeking approval renders dismissal inoperative.

In present case, statement of claim and evidence of 1st party is silent about dismissal of workman. Only witness Ram Swaroop and Tudu in his affidavit of evidence has stated that claimants are terminated on 31-8-2015. He has not produced any documentary evidence about termination of services. 2<sup>nd</sup> party has not pleaded about termination of services of claimants therefore ratio held in above case cannot be applied to case at hand.

Judgment in matter of All India Railway Parcel and goods versus Union of India and others reported by Apex Court is also brought to my notice. In said judgment, the services of parcel porters working under contractors for more than 240 days directions were issued for their absorption.

In present case, evidence of 1st party claimants about their selection as parcel porters and working is not cogent. They were working about 72 days in a year. They have not produced appointment letters as parcel porters. Ratio held in the case cannot be applied to case at hand.

21. Reliance is also placed on ratio held in case of

National Federation of Railway versus Union of India and others reported in Writ Petition 507 of 1992. Their Lordship considering report submitted by ALC(C) and continuous working as Railway Parcel porters as contract labour, directions were issued for absorption.

The facts of present case are not comparable as 1st party workman have failed to establish that they were appointed as parcel porters as per the notification. The Notification is not produced. As per their own evidence and affidavit filed in the annexure, they worked less than 72 days per year. Therefore ratio held in above cited case cannot be applied to case at hand.

22. Shri P.Choubey has further relied ratio held in case between

Amarkant Rai versus State of Bihar and others reported in Civil Appeal No. 2835 of 2015. Their Lordship dealing with ratio held in Umadevi's case. Para 53 of the judgment observed irregular appointment of employees who have worked for more than 10 years should be considered on merits and steps to be taken one time measure to regularize them. In para 12, their Lordship have further discussed that appointment of such employee should not be illegal even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed donot possess the prescribed minimum qualifications, the appointments are considered to be irregular.

In present case, from evidence of 1st party their appointment as parcel porter is not established. However they were working as parcel porters 4 hours by monthly rotation and after 1997, they were working 6 days in a month, they

have not completed 120 days working or 240 days working during any of the year. They have not discharged the burden about valid appointment as parcel porter. Therefore ratio in above cited case cannot be applied to case at hand.

23. Shri P.Choubey also relied on ratio held in case between

ONGC Ltd versus Petroleum Coal Labour Union and others reported in Civil Appeal No.3727 of 2015 decided by Apex Court on 17-4-2015. Ratio held in the case pertains to in absence of plea of unfair labour practice, the powers of Labour Court to deal with the mischief can be exercised.

In present case, when the evidence on record shows the Ist party workman were working intermittently from 1995 onwards. The reference is made as per order dated 8-3-99. Intermittent working for few years as portal cannot establish unfair labour practice under Item 10 Schedule 5 of ID Act. Therefore ratio cannot be applied to present case at hand. From reasons discussed above, I find that Ist party claimants have not established their right that they should be provided regular work/employment as Railway Employees claimed by them. Point No.2 is therefore answered in Negative.

24. In the result, award is passed as under:-

- (1) Ist party claimants are workmen under Section 2(s) of ID Act. However they are not entitled for regular work and benefit of pay scale claimed by them.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 184.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 06/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/57/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 184.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 06 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/57/2013-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 06/2014

Employer in relation to the management of Bastacolla Area of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri Ganesh Prasad, Advocate

For the workman : Shri S.N.Goswami, Advocate

State : Jharkhand

Industry : Coal

Dated : 25/11/2016

## AWARD

By order No. L-20012/57/2013 IR-(CM-I), dated. 01/01/2014 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

## SCHEDELE

“Whether the action of the management of Dobari Colliery of M/S BCCL in dismissing Sri Santosh Kumar Bhua Ex- M/Loader from the service of the company vide order dated 05.11.2005 justified and fair? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 16.01.2014 After receipt of reference, both parties are noticed. The workman files their written statement on 23.04.2014. And the management files their written statement - cum-rejoinder on 15.10.2014. The point involved in the reference is that the workman has been dismissed from his services.
3. During preliminary hearing of this case, domestic enquiry held by the management is accept by the workman as Fair & Proper .
4. Thereafter document of workman is marked as W-1 series and document of management is marked as M-1 to M-9.
5. The point involved in the reference is that the workman has been dismissed from his services on the ground of long absence. But he has already out of service for 11 years. It is felt to give another chance to the workman to serve.
6. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. But the workman be kept under probation for a period of two year. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 185.**—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार औौद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 102/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/145/2002-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 185.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 102 of 2002) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/145/2002-IR (CM-I)]

M. K. SINGH, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

**Reference No. 102/2002**

Employer in relation to the management of B & K Area of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

**Appearances:**

For the Employers : Shri D.K. Verma, Advocate  
 For the workman : Shri D. Mukherjee, Advocate  
 State : Jharkhand

Industry : Coal

Dated : 11/11/2016

**AWARD**

By order no. L-20012 /145/2002 /IR (C-I) dated 11 / 04/2002, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub – section (1) and sub – section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

**SCHEDEULE**

“Whether the action of the management of B.K. area of M/S C.C. Ltd in superannuating Sri Kartik Mahato-II w.e.f 12.10.2000 without accepting his actual date of birth as 28 years on 17.08.72 is justified and legal? If not what relief the concerned workmen entitled to?”

2. The case is received from Ministry of Labour on 27.09.2002. The workman files written statement on 16/28.10.2002 but the management files their written statement on 13.05.2003. One witness each side adduced on their behalf. Documents of the management marked as M-1 to M-3 but one documents of workman marked as W-1 series.

3. The case of the workman is that Sri Kartik Mahto-II was originally appointed in Dhori Colliery on 17.08.72 and at that time his age was recorded in the statutory Form “B” register as 28 years as on 17.08.72

4. It is further submitted by the workman is that Form “B” register is a statutory register maintain under the provision of Mines Act and hence the particular and age recorded in form “B” register at the time of appointment has got statutory force. After some time he was transferred to B & K Area in the year 1977-78. But the age of the workman was not recorded as it was recorded in the form “B” register of Dhori Colliery.

5. The concerned workman has represented before the management several times that his age was recorded as 28 years as on 17.08.72 till then the anti labour management terminated his service w.e.f 12.10.2000 on the ground of alleged superannuation. The concerned workman and the union represented before the management several times against the illegally and arbitrarily pre-matured superannuation but without any effect. Hence Industrial dispute arose.

6. On the other hand the case of the management is that the concerned workman was a permanent employee of Karo Special Project phase-II of B&K Area of M/S CCL. And as per Form “B” Register, the date of birth of the workman was recorded as 12/10/1940. And the workman concerned has put his thumb impression on the said Form “B” Register, in which his date of birth has been mentioned as 12/10/1940.

7. The workman concerned never raised objection in this regard during service period to his date of birth recorded in Form “B” Register and accordingly the management issued a notice of retirement of the workman on completion of 60 years of his age as per Form “B” Register w.e.f 12/10/2000.

8. It is also submitted by the management the after retirement of the workman, he no more workman within the meaning of Section 2 S of the Industrial Dispute Act 1947.

9. It is further submitted by the management that the sponsoring Union raised the present dispute after retirement of the workman concerned. As per the provision of law a workman is to be superannuated on the basis of recorded date of birth in the statutory documents of the company, as the concerned workman did not raise any dispute for the correction of date of birth within the reasonable time of the entries made in Form “B” Register, he can not raise any dispute for correction of the same after his superannuation. As such the claim of the union for correction of date of birth of the workman concerned after superannuation is neither legal nor justified.

10. Short point to be decided in this reference is whether the workman has been superannuated prematurely or not.

11. The management in the case one witness has been examined, photocopy of Form “B” register of the many workman in the sheet filed. Marked as M-2. In which name of workman is also mentioned.

12. The witness has stated that as per the version of the workman his name was recorded in form “B” register. The workman has called for the original form “B” register from the management and that was not filed, for which the workman claimed that he is to retire in 2002 but he was illegally retired in 2000. but he has also called for conciliation file from ALC Hazaribagh which is marked as W-1 Series.

13. The workman in his evidence has stated that he has no document as he was aged 26 in the year 1972. Even though the management failed to file the original form "B" register. Moreover from W-1 Series and M-1 & M-2, all documents it appears that the DOB as calculated is 12.10.1940.

14. The workman has to prove his case himself i.e he is to stand on his own legs. As now the workman failed to prove his case. Another thing is that the workman raised dispute at a belated stage which is afterthought and seem that it is to get for illegal gain.

**As per civil appeal No. 2331 of 2004 SC, State of MP Vs. Prem lal Shrivs, page 279 in which-- Court to be circumspect, cautious and careful while issuing direction for correction in date of Birth of a Govt. servant- particularly at the fag end of his career or on the eve of his superannuation – Employee cannot claim as a matter of right for correction in his date of birth even if has good evidence.**

15. Considering the facts and circumstances of this case. I hold that the action of the management of B & K area of M/S C.C. Ltd in superannuating Sri Kartik Mahato –II w.e.f 12.10.2000 without accepting his actual date of birth as 28 years on 17.08.72 is justified and legal, hence he is not entitled to get any relief here, he has been rightly superannuated.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 186.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 50/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/136/1990-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 186.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 50 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/136/1990-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 50/1995

Employer in relation to the management of East Katras Colliery of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 23/11/2016

### AWARD

By order No. L-20012 /136/1990-IR(C-1) dated 02/06/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDULE

“Whether the action of the management of East Katras Colliery in Katras Project Area in superannuating Shri Mouji Mahato ex – Pump Operator w.e.f. 01/01/1990 is justified ? if not, to what relief the said workman is entitled?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 187.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 56/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/264/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 187.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 56 of 1995) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/264/1994-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 56/1995

Employer in relation to the management of Godhar Colliery of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

**Appearances:**

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 23/11/2016

### AWARD

By order No. L-20012 /264/1994-IR(C-1) dated 12/06/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub–section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDE

“Whether the action of the management of M/S BCCL, Area No. VI in relation to Godhur Colliery in not regularizing workman, Chatu Mandal in clerical Grade-III w.e.f. 17/12/1990 is justified? If not, to what relief the workman concerned is entitled? ?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 188.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 74/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/277/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 188.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 74 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/277/1994-IR (CM-I)]

M. K. SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 74/1995

Employer in relation to the management of Pindra Colliery of M/s. CCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

**Appearances:**

For the Employers : Shri H.N. Thakur, Personal Manager

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 24/11/2016

### AWARD

By order No. L-20012 /277/1994-IR(C-1), dated 14/07/1995, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

### SCHEDE

“Whether the action of the management of Pindra Colliery of C.C.L in reducing the number of annual holidays of Shri Bhogendra Mishra. Head Security Guard from 18 days to 8 days and also effecting recovery of wages for the facility already availed in past is legal and justified? If not, to what relief the workman is entitled?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by the workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 189.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 51/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/177/1993-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 189.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 51 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/177/1993-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 51/1995

Employer in relation to the management of Lohapatty Colliery of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 24/11/2016

#### AWARD

By order No. L-20012 /177/1993-IR(C-1) dated 2/07/06-1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDEULE

“Whether the demand of the Union for revision of the date of birth recorded by the management of Lohapatty Colliery of M/s BCCL, P.O. Ramnagargarh, Distt. Dhanbad as 21 Years as on 25/06/86 of Shri Tupal Rewani is legal and justified? If so, to what relief the concerned workman is entitled” ?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates by workman, none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 190.**—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 245/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/226/2000-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 190.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 245 of 2000) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/226/2000-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 245/2000

Employer in relation to the management of Kedla O.C.P., M/s. CCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri S.K. Sharma, Advocate

State : Jharkhand

Industry : Coal

Dated : 10/11/2016

#### AWARD

By order No. L-20012/226/2000-IR (C-1) dated 29/08/2000, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

“Whether the action of the management of Kedla Open Cast Project of M/s. C.C. Ltd in not paying substance allowance to Shri Dhanpal Prasad Asstt. Loading Clerk is justified? If not to what relief is the workman concerned entitled?”

2. The case is received from the Ministry of Labour on 18.09.2000. After receipt of reference, both Parties are noticed, After long delay the workman files their written statement on 18.02.2010. The management also files their written statement-cum-rejoinder on 15.09.2011. One witness adduced on behalf of the workman but no witness adduced by the management. Documents of the workman is marked as W-1 to W- 30.

3. The case of the workman is that the applicant is an employee under the management as an Asstt. Loading clerk and posted at Kedla Open cast project, North Ramgarh (N.R) Siding at kedla under M/S C.C.L. The management issued charge sheets to the applicant not once or twice but six times and said charge sheets include suspension order.

4. The applicant submitted his explanation to all charge sheets on due dates and after some time of receipt of those explanation, the management always allowed the applicant to resume his duty, but did not set up any inquiry regarding the charge sheets. But when the applicant insisted the management to set up inquiry, the management conducted inquiry for remaining two charge sheets and after enquiry and investigation the applicant was exonerated from the charges.

5. It is also submitted by the workman that during the suspension period when the applicant attended the office of Dy.P.M for getting his attendance in separate register kept for the purpose the management intentionally removed said register, reinstate the applicant without making any inquiry. He also said that if inquiry conducted in all these chargesheets –cum-suspension order it is sure he would have been exonerated in all charges. But during the suspension period, the management neither paid full payment/wages nor any subsistence allowance to the applicant inspite of repeated demand.

6. On the other hand the management submitted that the workman concerned was charge sheeted by the management for commission of misconduct according to the provision of certified standing order vide charge sheet-cum-suspension order no. PO/K/Chage sheet-cum-susp/96/6097-6102, dated 20/21-06-1996. Then he was suspended from his duty w.e.f. 21.06.96 until further order.

7. It is further submitted by the management that the vide order No. PO/K/17/96/8436-40, dated 5/08/96 the management withdrawn the order of suspension pending enquiry and directed the workman to report for duty, and the management again vide order No. PO/K/17/96/9869-72, dated 17/19-09-96 issued a direction to the workman concerned to resume his duty with a warning that if he did not report for duty, then disciplinary action would be initiated against him for unauthorised absent.

8. The workman concerned marked his attendance only 37 days during the period of suspension. Accordingly the management paid him subsistence allowance for 37 days. And nothing is laying outstanding as subsistence allowance.

9. The workman has been suspended by the management in various occasions. The workman at the time of framing of charge was also directed to resume duty pending enquiry. It is also mentioned on the order of suspension, to report before one officer, during suspension and it is submitted by the management that the workman attended only 37 days and he was paid his subsistence allowance.

10. The management submitted that rest period he did not remain present, and as such was not given subsistence allowance on the rule of no work no pay principle. The management submits that the workman attended only 37 days got his wage. The union also did not cross examine the workman nor called for the attendance register. But from the document Ext. W-17 shows that the charge against the workman was not proved, therefore the workman is entitled to get full pay for the aforesaid 37 days minus the subsisting allowance. The payment be made to workman soon after publication of award. If the full wage was already paid for the 37 days. He would not be entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 191.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 96/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/107/2014-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 191.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 96 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/107/2014-IR (CM-I)]

M. K. SINGH, Section Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

## LOK ADALAT

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 96/2014

Employer in relation to the management of Katra Area of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer**Appearances:**

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri S.C. Gour, Rep.

State : Jharkhand

Industry : Coal

Dated : 18/11/2016

## AWARD

By order No.-L-20012/107/2014 IR-(CM-I), dated. 15/10/2014 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

## SCHEDULE

“Whether the action of the management of Katras Chaitudih Colliery of BCCL in not paying leave encashment for 45 days in respect of Smt. Reshma Kamin is fair and justified? If not to what relief the concerned workman is entitled?”

2. The case is received from the Ministry of Labour on 27.11.2014. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 04.09.2015. But at the time of filing of written statement by the management It is revealed that very short point involved in the reference that whether the workman has been entitled for leave encashment for 45 days or not.

3. During preliminary hearing, management has admitted that the workman is entitled leave encashment for only 30 days instead of 45 days. The workman has agreed to that and she has no objection to accept 30 days leave encashment money amounting to Rs. 7604/- . Hence now the case is settled for Rs. 7604/- . The amount has already been received by Smt. Reshma Kamin the concerned workman.

4. Therefore the case is decided as per the settlement. Hence settlement award is passed.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 192.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 12/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/55/2006-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 192.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1,

Dhanbad (I.D. No. 12 of 2010) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/55/2006-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

**Reference No. 12/2010**

Employer in relation to the management of KNTA, M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : Shri N.M. Kumar, Rep.

State : Jharkhand

Industry : Coal

Dated : 22/11/2016

#### AWARD

By order No. L-20012 /55 /2006/IR (CM-I) dt. 29.01.2010 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section(1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

Whether the demand of the Jharkhand colliery Mazdoor Union from the management of K.N.T.A of M/S BCCL to pay Shri Ashork Hari, sweeper the alleged forced idle wages since 21.12.1994 till the date of superannuation is justified and legal? To, what relief is the workman concerned entitled?"

2. This Case is received from the Ministry on 09.02.2010. The Sponsoring Union files written statement on 07.02.12 and the management also files written statement-cum-rejoinder on 20.12.2012. During the pendency of the case Id counsel of the Sponsoring Union and the workman concerned appear and file a petition and submit that they do not want to pursue the reference and want to withdraw the same. They are permitted to withdraw the same. Hence pass an award of No Dispute accordingly.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 193.—**ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 43/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/342/1992-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 193.—**In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 43 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/342/1992-IR (CM-I)]

M. K. SINGH, Section Officer

## ANNEXURE

## BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

## Reference No. 43/1995

Employer in relation to the management of Dugdha Coal Washery of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer**Appearances:**

For the Employers : Shri U.N. Lal, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 25/11/2016

## AWARD

By order No. L-20012 /342/1992-IR(C-1) dated Nil, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

## SCHEDELE

“Whether the demand of the Union for regularization by the Principal employer, viz. management of Dugdha Coal Washery of M/s BCCL of Shri Badri Singh and 11 others ( As per list enclosed) employed through M/s Engineering Projects ( India) Ltd. Contractor, is legal and justified. In the light of the S.C. Judgment in Dinanath Case? If so, to what relief the concerned workmen are entitled and from which date?”

## ANNEXURE

## List of workmen

Sl.No.	Name	Father's Name	Age	Date of engagement	Place of work
1	S/sri Badri Singh	S/Sri Bihari Singh	28	24/06/80 to 03/04/84	UpgradationPlant/ Dugda
2	Lok Nath Mahto	Ratilal Mahto	26	-do-	-do-
3	Sagar Ch. Choudhury	U. N. Choudhury	28	-do-	-do-
4	Sarju Prasad Singh	Jagdeo Singh	29	-do-	-do-
5	Md. Yunus Ansari	Md. N. Ansari	26	-do-	-do-
6	A.P. Burnwal	R.P. Barnwal	25	-do-	-do-
7	Md. Idris Ansari	Md. Barku Ansari	26	-do-	-do-
8	Rameshwar Manjhi	Musu Manjhi	28	-do-	-do-
9	Bachu Gope	Bisu Gope	31	-do-	-do-
10	Pati Gope	Jhumar Gope	31	-do-	-do-
11	S. N. Singh	P.N. Singh	32	-do-	-do-
12	Jai Mangal Mahto	Teko Mahto	27	-do-	-do-

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workmen. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 194.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 82/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/295/1992-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 194.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 82 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/295/1992-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 82/1995

Employer in relation to the management of Bastacolla Area, M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 17/11/2016

#### AWARD

By order No. L-20012 /295/1992-IR(C-1) dated 14/07/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDE

“Whether the action of the management of Bastacolla Area of M/s BCCL is Justified in retiring on superannuation Shri Nathuni singh, Haulage Operator, Ghanoodih Colliery w.e.f. 11/05/1992 ? if not, to what relief is the workman entitled?

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 195.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 77/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-20012/298/1994-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 195.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (I.D. No. 77 of 1995) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.01.2017.

[No. L-20012/298/1994-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

#### Reference No. 77/1995

Employer in relation to the management of Area No. VI of M/s. BCCL

AND

Their workman

**Present :** Shri R. K. Saran, Presiding Officer

#### Appearances:

For the Employers : Shri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 24/11/2016

#### AWARD

By order No. L-20012 /298/1994-IR(C-1) dated 14/07/1995, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

#### SCHEDULE

“Whether the action of the management of M/s BCCL Area No. VI in relation to its Industry Colliery in dismissing workman, Shri Malindo Mahto, Trammer, Form-B No. 341 w.e.f. 18/12/1992 is justified? If not, what relief the concerned workman is entitled to?”

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 196.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 175/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/294/2002-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 196.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 175/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 16.01.2017.

[No. L-22012/294/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/175/03

Shri Shrivmangal, S/o Shri Gajroop,  
Village Kumda Basti,  
PO Gangikot,  
Distt. Surguja (Chhattisgath)

...Workman

#### Versus

Chief General Manager,  
Bishrampur Area of SECL,  
PO Bishrampur,  
Distt. Surguja (Chhattisgarh)

...Management

#### AWARD

Passed on this 21<sup>st</sup> day of October, 2016

1. As per letter dated 13-10-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/294/2002-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL in removing the services of Shri Shrivmangal, General Mazdoor vide order No. 4772 dated -2-96 is legal and justified? If not, to what relief the affected workman is entitled?”

2. After receiving reference, notices were issued to the parties. Though workman has appeared through different Advocate, his statement of claim is no found on record.

3. However from Written Statement filed by management, it is apparent that the statement of claim was filed by workman. The parawise reply are given in Written Statement- Para 18 to 29. Above fact was also mentioned while dealing with issue of legality of enquiry order dated 16-10-2014. Ist party did not take any steps w.r.t. statement of claim. Despite the case was fixed for taking steps on 13-1-15, 22-4-15, 4-8-15. The affidavit filed by Ist party workman dated 14-6-2010. Case of Ist party workman appears that when chargesheet was issued to him by management, he was not supplied documents along with chargesheet dated 18-9-95. He was not given opportunity for his defence. Principles of natural justice were not followed. Enquiry was completed in one day. He was not given opportunity to produce his defence witness Pawan Singh. He was denied opportunity of Defence assistant. He was not supplied copy of Enquiry Proceedings. His signature of thump mark was not obtained on it. He was not informed about order of his termination. He was not supplied any document during Enquiry Proceedings. Termination of his service is illegal after termination of his service, he is unemployed.

4. Management filed written Statement at page 4/1 to 4/10. The management raised preliminary objection that workman was terminated on 1-6-96. Dispute was raised around 2010 is extremely belated. The reference is not tenable. 2<sup>nd</sup> party further submits that workman was appointed as general Mazdoor Category I on 10-1-90. Workman had accepted terms and conditions in offer of appointment. Since beginning, he was irregular in his duty. He was unauthorisely absenting from duty without intimation or sanctioned leave. Chargesheet was issued to workman in the past, enquiry was also ordered. Workman had tendered apology. Management did not take disciplinary action against him. The warnings was issued against workman. He was given opportunity to improve. Workman not shown any improvement in his conduct despite leniency shown by management in the matter of his unauthorized absence on many occasion.

5. Chargesheet was issued to workman for unauthorized absence for the period 11-7-91 to 31-9-91. It was confirmed that the workman was willfully absent. In spite of taking disciplinary action, he was let off by issuing warnings. Workman was allowed to report on duty from 1-11-91. The attendance of workman was poor—4 days in

March 1992, 9 + 13 days in April 1992, 11 days in May-92, 7 days in June, 5+2 in July and 8 days in Aug. 1992. Chargesheet was also issued to workman dated 1-3-93. Management had taken lenient view and let off the workman with a view to provide him opportunity to improve. Chargesheet was issued to workman on 14-18/9/95 for habitual absence under clause 26.30 of standing orders. The attendance of workman in 1992 was 11 days, 1993 was 53 days, 1994 was 27 days. Workman submitted reply to the chargesheet, his reply was found unsatisfactory. Therefore Shri M.L.Jaiswal was appointed as Enquiry Officer and Virendra was appointed as Presenting Officer. Enquiry was conducted on 10-10-95. Charges were explained to workman. The statement of management representative was recorded as per "C" Register. The statement of workman was also recorded. Workman had explained that he was suffering from illness and unable to attend his duty. He received treatment in Surajpur Government Hospital. Enquiry Officer submitted report holding charges against workman were proved. It is reiterated that despite leniency shown by management in the past, there was no improvement. The punishment imposed by management is legal. Workman has not given intimation about his absence. He has not received any facility of treatment in colliery hospital. He not reported to colliery hospital about illness. The dismissal of workman is legal.

6. As per order dated 16-10-14, enquiry conducted against workman was found legal.

7. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	Partly in affirmative pertaining to unauthorized absence under clause 24.30
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?	As per final order.

### REASONS

8. Enquiry conducted against workman is found legal, question remains for consideration is whether charges alleged against workman are proved. Chargesheet produced at Exhibit M-4, charges are alleged for unauthorized absence under Clause 26.30 and habitual absence under clause 26.24. chargesheet was issued on 10-9-95 earlier attendance is shown 94 days in 1992, 52 days in 1993, 27 days in 1994. In Exhibit M-5 reply to the chargesheet, workman has admitted absence from 1-8-95 to 23-8-95. He was suffering from illness and unable to do duties. Exhibit M-6, M-7 are notice of enquiry. Exhibit M-8 shows that original record of enquiry was stolen. The matter was reported to police station Bisrampur. Exhibit M-9/1 is copy of enquiry Proceedings finds reference that management representative produced verified Form "C" register. Workman was absent from 1-8-95. His attendance in past 3 years was seen. The working days of workman were 99 days in 1992, 53 days in 1993, 27 days in 1994. The workman replied that due to ignorance he had not given intimation about his absence. That he was receiving treatment in surajpur hospital during the period 1-8-95 to 23-8-95. Ist party workman has admitted his absence during above said period. Verified Form "C" register is not produced as such there is no evidence about working days of workman during the period 1992 to 1994. Enquiry report is produced at exhibit M-9/2 finds reference that the chargesheet was issued for unauthorized absence from 1-8-95. Workman had not sent intimation by post. Workman had produced certificate of Surajpur Hospital about receiving treatment. There is no valid evidence about unauthorized absence of Ist party workman during 1992 to 1994 in the enquiry proceedings. Only charge under clause 26.30 is proved that workman had not given intimation about his absence from duty. Charge under clause 26.24 is not proved. For above reasons, I record my finding in Point No.1 partly in Affirmative.

9. Point No.2- In view of my finding in Point No.1 charge under clause 26.30 is proved with regard to absence of workman from 1-8-95 to 23-8-95. The charge of habitual absence is not established. For proved charge of unauthorised absence for 23 days, punishment of dismissal is disproportionate. The punishment of dismissal needs to be modified. Accordingly I record my finding in point no. 2 in Negative.

10. In view of my finding in point No.1, 2, only charge of unauthorised absence for 23 days is proved, question remains for consideration whether claim for reinstatement with backwages would be granted. Affidavit filed by workman in the year 2010, age of workman is shown 60 years therefore relief of reinstatement is not possible. Workman was in service from 1990 to 1-2-96 hardly about 6 years. Considering the facts of case and workman has already attended age of superannuation long back, compensation Rs.1 Lakh would be appropriate. Accordingly I record my finding in point No. 3.

11. In the result, award is passed as under:-

- (1) The action of management removing workman from service as per order dated 1-2-96 is not legal.
- (2) Punishment of removal/dismissal from service is set-aside. Management is directed to pay compensation Rs.1 Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 16 जनवरी, 2017

**का.आ. 197.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 74/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/297/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 16th January, 2017

**S.O. 197.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. SECL and their workmen, received by the Central Government on 16.01.2017.

[No. L-22012/297/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

#### REFERENCE NO. 74 OF 2006

#### PARTIES :

The management of New Kenda Colliery of M/s. E.C.L.

v/s

Sri Sibram Bisai

#### REPRESENTATIVES :

For the management : Sri P. K. Das, Ld. Advocate

For the union (Workman) : Sri S. K. Pandey, Union Representative

Industry : Coal State : West Bengal

Dated : 11.08.2016

#### AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/297/2005-IR(CM-II)** dated 06.10.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDEULE

“Whether the action of the management of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited in dismissing Sri Sibram Bisai, Surface Trammer, U.M. No. 897934 w.e.f. 16.07.2001 is legal and justified? If not, to what relief the workman is entitled?”

1. Having received the Order No. L-22012/297/2005-IR(CM-II) dated 06.10.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 74 of 2006 was registered on 31.10.2006. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Sibram Bisai has stated, in brief, in his written statement that he was in employment of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited as Surface Trammer bearing him Man No. 097934. He fell sick on and from 21.09.1997 and could not attend his duty. He informed the management about his sickness. When the concerned workman reported for duty, but he was not allowed to join his duty, rather he was dismissed from service without serving copy of Charge Sheet. The union raised the dispute before the Assistant Labour Commissioner (Central), Raniganj. During the conciliation proceeding the management served the copy of Charge Sheet and copy of Dismissal Letter. Management did not follow the principle of natural justice. Management conducted the departmental enquiry ex-parte against the workman and passed the Dismissal Order. Workman was not given opportunity to prove his innocence. He was never served with the copy of Charge Sheet or Enquiry Notice. He was not served 2<sup>nd</sup> Show Cause Notice before passing Dismissal Order. The management acted in violation of principle of natural justice. The Enquiry Officer and Presenting Officer are highly biased and prejudice against the workman. The dismissal is illegal. Workman belongs to downtrodden community. He is sitting idle without any job and his whole family is dying without meal. Workman has prayed that the management of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited be directed to re-instate the workman in service with payment of full back wages from the date of dismissal with all consequential benefits.

3. Agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited has stated in brief in his written statement that the ex-workman remained absent from his duty continuously since 21.09.1997 without any prior permission or sanctioned leave. For this act of misconduct the ex-workman was issued Charge Sheet vide letter no. PERS/NKC/CS/99/1488 dated 16.12.99. Said Charge Sheet was sent to the address of the ex-workman at his home address. But the ex-workman failed to submit any reply to the said Charge Sheet and as such a domestic enquiry was held into the said Charge Sheet by the Enquiry Officer. The date of enquiry was fixed on 01.07.2000, 14.08.2000 and 25.08.2000. But in spite of issuance of notice of enquiry to the recorded address of the ex-workman he did not turn up on any of the dates. Due to his non participation in the enquiry, the enquiry was conducted ex-parte in which the charges levelled against the workman were duly proved. The competent authority issued 2<sup>nd</sup> Show Cause Notice to the ex-workman. But the ex-workman failed to submit his explanation and as such the Disciplinary Authority awarded an Order of Dismissal from his service for his misconduct which was very grave in nature. Moreover the ex-workman is a habitual absentee and he had been punished for similar misconduct. The action of management in dismissing the ex-workman is totally justified and in proportion to the gravity of misconduct under the provision of the Certified Standing Order of the company. The past record of the workman was also not satisfactory. Punishment awarded to the ex-workman is justified in proportion to the gravity of misconduct committed by the ex-workman. The agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited has denied in his written statement that there was any violation of principle of natural justice in enquiry proceeding. Ex-workman is not entitled to any back wages. The action of management is fully justified in dismissing the ex-workman from service. The ex-workman is not entitled to get any relief.

4. The union has filed following documentary evidences :

(i) Copy of the Charge Sheet, (ii) Copy of the Enquiry Proceedings, (iii) Copy of the Enquiry Report, (iv) Copy of the Dismissal Order, (v) Copy of the Identity Card issued to the workman by the company.

Sri Sibram Bisai has filed affidavit in his evidence. He has been cross-examined by the learned advocate of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited.

The Agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited has not filed any oral or documentary evidence.

5. I have heard Sri S. K. Pandey, learned Union representative on behalf of workman and Sri P. K. Das, learned Advocate on behalf of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited.

6. Sri P. K. Das, learned advocate of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited has argued that the workman has been punished for his long unauthorized absence from duty. In departmental enquiry his guilt was proved the punishment of dismissal is justified. In past he has also been punished for his unauthorized absence.

On other hand Sri S. K. Pandey, learned union representative has argued that the concerned workman Sri Sibram Bisai was absent from duty from 21.09.1997 to 16.12.99 due to his sickness. He was absent due to compelling circumstances beyond his control. The management without serving copy of Charge Sheet and even without Notice of Enquiry conducted the ex-parte departmental enquiry in absence of workman. Even opportunity of cross- examination was not given to the workman. The enquiry was conducted in utter violation of principle of natural justice. The ex-parte enquiry was conducted for the period 21.09.1997 to 16.12.99 and punishment of stoppage of 3 (Three) increments were imposed on him. But in the same enquiry for the same period he was punished by dismissal from service. A workman can not be punished twice for same misconduct.

7. It is admitted fact that Sri Sibram Bisai was in employment of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited. The workman has challenged the enquiry proceeding being devoid of natural justice, which has been denied by New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited. The allegation of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited is that the concerned workman had been absent in past also. From the perusal of Charge Sheet vide letter no. PERS/NKC/CS/99/1488 dated 16.12.1999 it transpires that workman has been charge sheeted for his previous absence also. But there are no particulars of his previous absence and punishment. Before proceeding with the domestic enquiry against an offending workman, he must be informed clearly, precisely and accurately of the charges levelled against him. It is the duty of employer to indicate to the delinquent employee not only the precise nature of the charges but also the documents, if any, upon which the charges are based. This is all the more necessary where the charges are of a general nature pertains to a period of time. The Charge Sheet should specifically set out the charges which the workman called upon to show cause against and should also state all relevant particulars without which he can not defend himself. The object of this requirement is that the delinquent workman must know what he is charged with so that he may have opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence with which he is charged, otherwise it will amount to his being condemned unheard. If the charges are imprecise or indefinite, the person charged, would not be able to understand them and defend himself and the resulting enquiry would not be fair and just enquiry. The employer can not justify his action on any grounds other than those contained in the Charge Sheet. If the charges are vague and the workman has no opportunity to reply them and if the particulars of charges are also not disclosed to the workman, the enquiry will not be in confirmatiy with the rules of natural justice. It is incumbent upon the employer to give the charge sheeted workman sufficient particulars in the Charge Sheet which would enable the delinquent workman to give proper workman and to defend himself properly. Any amount of evidence lead in the enquiry is no substitute for a Charge Sheet lacking precise an definite particulars. Any Charge Sheet which fails to comply with the requirement of the principle of natural justice is no Charge Sheet at all. From perusal of Charge Sheet, no detail has been mentioned for his previous absence.

8. Hon'ble Apex Court in **Brij Bihari Singh v/s The State of Bihar, 2016 (148) FLR 197** has held that :

*"It is well settled that a person who is required to answer a charge, should know not only the accusation but also the testimony by which accusation is supported. "*

9. The Enquiry Officer has mentioned in his enquiry proceeding and enquiry report that notice was sent to delinquent workman on 31.07.2000, 14.08.2000 and 25.08.2000. But he has not mentioned that whether the notice was served on delinquent workman or not. If notice of date, venue and time of enquiry has been sent to concerned workman and if it was served on delinquent employee, then after service of notice if delinquent employee does not appear or participate in enquiry proceeding then Enquiry Officer can very well proceed ex-parte against the delinquent workman. But before proceeding ex-parte enquiry against the delinquent workman it is incumbent upon the Enquiry Officer to ensure and record in enquiry proceeding that delinquent was served with notice of enquiry and delinquent failed to participate in the enquiry. But it is surprising to note that the Enquiry Officer has not recorded any finding regarding service of notice of enquiry to the delinquent. Even copy of Notice of Enquiry or Postal Receipt has not been filed by the agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited. If delinquent after service of notice does not appear in the enquiry proceeding then he will lose the opportunity of cross-examination. But still he has right to lead defence evidence. It is mandatory for the Enquiry Officer to fix a date and to provide opportunity to lead defence evidence to delinquent even in ex-parte enquiry.

10. Hon'ble Supreme Court in **State of U.P. & Others v/s Saroj Kumar Sinha, 2010 (124) FLR 857** has held that:

*"If delinquent workman does not appear enquiry may proceed ex-parte. He will lose opportunity of cross-examination but still he has right to lead defence evidence."*

It is apparent from enquiry proceeding and report that the Enquiry Officer neither fixed a date for defence evidence nor provided opportunity to delinquent workman to lead defence evidence. Enquiry officer recorded the evidence of management witness on 25.08.2000 and without fixing a date for defence evidence he send the enquiry report on very next day i.e. 26.08.2000.

11. It is apparent from perusal of Enquiry Report that due to absence of delinquent from 21.09.1997 after conducting ex parte departmental enquiry the delinquent was awarded punishment with stoppage of 3 (Three) increments. The delinquent workman was directed by management to resume duty from 07.12.1998 by letter of Area Authority of Kenda Area vide letter no. Pers/KND/26/2260 dated 17/18.11.1998 and subsequent letter of Dy. CME of New Kenda Colliery vide letter no. Pers/NKC/98/1423 dated 03/04.12.1998. But delinquent workman did not resume his duty. Charge Sheet has been issued to the delinquent for absence from 21.09.1997 till which date it was not been mentioned. Charge Sheet has been issued on 16.12.1999 therefore it indicates that the workman has been charge sheeted for the period 21.09.1997 to 16.12.1999. It has been mentioned that workman had been punished with stoppage of 3 (Three) increments for the period of absence from duty since 21.09.1997. But the Charge Sheet reflects that again he was charge sheeted from 21.09.1997. It means that he has been punished twice for the absence of same period from 21.09.1997. If workman was absent from 21.09.1997 and if was punished with stoppage of 3 (Three) increment. If he did not resume his duties from 07.12.1998 as per direction of the management then in that case he could again be charge sheeted and enquired into for the absence from duty from 07.12.1998. The order of punishment regarding stoppage of 3 (Three) increments is not on record. It appears, that two enquires were conducted against, delinquent workman. One enquiry was conducted, for the absence for the period from 21.09.1997 till date. 2<sup>nd</sup> Enquiry was conducted for the absence from 07.12.1998, whereas the delinquent workman had already been punished for the period of absence from 21.09.1997. A person or workman can not be punished twice for the same period of absence. This is against provision of law.

12. By virtue of Article 311(2) of the Constitution of India the departmental enquiry has to be conducted in accordance with the rules of the natural justice. Departmental enquiry conducted against the government servant can not be treated as a casual exercise. The enquiry proceeding also can not be conducted with a closed mind. The Enquiry Officer has to be un-biased and impartial. The rules of natural justice are required to be observed to ensure that not only the justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may calumniate in imposition of punishment including dismissal of service.

13. The Agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited has mentioned in Para-3 of his written statement that competent authority issued 2<sup>nd</sup> Show Cause Notice to the ex-workman but the ex-workman failed to submit his explanation, as such the Disciplinary Authority awarded Order of Dismissal from service for his act of misconduct. Workman has denied issuance of 2<sup>nd</sup> Show Cause Notice before passing Order of Dismissal in Para-8 of his written statement. The copy of 2<sup>nd</sup> Show Cause Notice has not been filed on the file of reference by the agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited. If relevant documents are withheld from the party who is in possession of these documents the adverse inference will be drawn that 2<sup>nd</sup> Show Cause Notice was never issued before passing Order of Dismissal. Besides from perusal of dismissal order Ref. Pers/NKC/Termination/755 dated 16/17.07.2001 it indicates that after conclusion of enquiry the Competent Authority straightway awarded the punishment of dismissal without issuing 2<sup>nd</sup> Show Cause Notice. In the order of dismissal Ref. Pers/NKC/Termination/755 dated 16/17.07.2001 (supra) there is no mention of 2<sup>nd</sup> show cause notice. In view of law propounded hon'ble Apex Court in **Union of India & Others v/s Mohd. Ramzan Khan, 1990 (61) FLR 376**, 2<sup>nd</sup> Show Cause Notice to the proposed punishment before passing the order of termination is mandatory. When the rights are affected the principle of natural justice had to be observed. A departmental enquiry, devoid of principle of natural justice can not be accepted. The misconduct of any delinquent workman has to be proved in accordance with law. The dismissal of workman by any procedure unknown to law is not only illegal and unjustified but requires correction.

14. The workman in Para-13 of his written statement has stated that he belongs to downtrodden community and he is sitting without any job. His whole family is dying without meal. This fact has not been rebutted by the agent of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited. The workman Sri Sibram Bisai has stated in Para-6 of his affidavit that he belongs to Schedule Cast community and he is sitting without any job from the order of dismissal. He has been cross-examined by the learned advocate of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited. But his statement in examination-in-chief is unrebutted. As per Identity Card of Sri Sibram Bisai filed on record his date of birth is 28.03.1958 and his date of appointment is 29.09.1980. He has been dismissed from service w.e.f 16.07.2001. He has put 20 years of service before dismissal. After dismissal w.e.f. 2001 till now he is jobless. He belongs to Schedule Cast community a weaker section of society. Keeping in view his length of service period of dismissal and his social strata and unemployment during period of dismissal, there is no possibility of getting alternative job.

15. The hon'ble Supreme Court in **Pawan Kumar Agarwala v/s General Manager-II & Appointing Authority State Bank of India & Others, 2016 (148) FLR 865** has relied on **Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324** :

*“In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.”*

**16.** Therefore in view of law propounded by hon’ble Apex Court the concerned workman Sri Sibram Bisai is entitled to get full back wage from the date of dismissal till his reinstatement. It is settled law that, consequential benefits do not mean only back wages, it includes much more things beyond back wages, such as promotions, fixation of seniority and other financial benefits admissible to post if termination has been declared illegal and unjustified.

**17.** In view of above discussion the action of management of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited in dismissing Sri Sibram Bisai with effect from 16.07.2001 is illegal and unjustified. The management of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited is directed to reinstate Sri Sibram Bisai in service with full back wages from order of dismissal i.e. 16.07.2001 till his reinstatement. It is further directed that Sri Sibram Bisai will be entitled to get all consequential service benefits such as promotions, increments, fixation of seniority and other financial benefits admissible to the post. Sri Sibram Bisai will be imposed a punishment of 4 (Four) annual increments without cumulative effect.

### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 17 जनवरी, 2017

**का.आ. 198.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 06/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/55/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2017

**S.O. 198.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Khoirabad Colliery of M/s. ECL and their workmen, received by the Central Government on 17.01.2017.

[No. L-22012/55/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

#### REFERENCE NO. 06 OF 2005

#### PARTIES :

The management of Khoirabad Colliery of M/s. E.C.L.

v/s

Sri Tawas Mian

**REPRESENTATIVES :**

For the management : Sri P. K. Goswami, Learned Advocate

For the union (Workman) : Sri S. K. Pandey, Union Representative

Industry : Coal

State : West Bengal

Dated : 29.12.2016

**AWARD**

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/55/2004-IR(CM-II)** dated 27.12.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited in dismissing Sh. Tawas Mian, U.G. Loader from service w.e.f. 29.1.2003 is legal and justified? If not, to what relief the workman is entitled and from which date? ”

1. Having received the Order **NO. L-22012/55/2004-IR(CM-II)** dated 27.12.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **06 of 2005** was registered on 12.01.2005. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Tawas Mian has stated in his written statement that he was in employment of the company as Under Ground Loader having his Man No. 110146 at Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited. He became ill w.e.f. 13.07.2002. He reported his sickness in colliery dispensary on 16.07.2002. He sent the information to the management about his sickness through registered post. He was chargesheeted for alleged unauthorized absence for the period from 13.07.2002 to 08.08.2002, vide Chargesheet No. KB/C-6/CS/Nil dated 08.08.2002. The workman was not allowed to take help of the co-worker during the enquiry proceeding. The Enquiry Officer has given his finding against the workman, ignoring the sick certificate etc submitted by the workman during enquiry proceeding. The workman was not served with the 2<sup>nd</sup> Show Cause Notice before awarding him punishment of dismissal. He had never been chargesheeted on the charge of habitual absence from duty. The workman was dismissed from the services of the company w.e.f. 29.01.2003. The workman Sri Tawas Mian has stated that his dismissal from service is illegal and unjustified. The workman has prayed that the Tribunal may kindly direct the management of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited to reinstate the workman in service with payment of full back wages for the period from the date of dismissal with all consequential benefits.

3. The Agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited has alleged in his written statement that concerned workman Sri Tawas Mian was a permanent employee of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited. The concerned workman was chargesheeted vide Chargesheet No. KB/C-6/CS/Nil dated 08.08.2002 for the act of his unauthorized absence as well as habitual absence as alleged by the workman in Para-4 of his written statement. The concerned workman duly appeared before the Enquiry Office. He was provided all sorts of opportunities. He merely alleged that he was ill, but he did not care to receive any treatment from any Hospital of the Company. Even he failed to show any reason for his absence. The Agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited has denied in his written statement that the workman was not provided assistance of co-worker. The Enquiry Officer after hearing the parties held the workman guilty for misconduct and submitted his report to the competent authority. After perusing the Enquiry Report as well as the gravity of misconduct the competent authority passed the Dismissal Order in accordance with the provisions of the standing order. The past performance of the concerned workman was poor. In the year 1999 his attendance was 148 days, in the year 2000 his attendance was 166 days, in the year 2001 his attendance was only 80 days. The management could not mend the behavior of the concerned workman in spite of their best effort. The concerned workman has been earning his livelihood from other source. He is not entitled to any relief. The dismissal was effected from 29.01.2003. The gratuity has been determined and deposited before the controlling authority. The concerned workman has applied for his C.M.P.F. (Coal Mines Provident Fund).

4. The workman has filed the following documentary evidence :-

(i) Photo copy of Identity Card issued by M/s. Eastern Coalfields Limited.

The workman Sri Tawas Mian has submitted affidavit in his oral evidence. He has been cross-examined by the learned advocate of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited.

The Agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited has filed following documentary evidences :-

(i) Photo copy of the Letter of dismissal, (ii) Photo copy of the Enquiry Report, (iii) Photo copy of the Enquiry Proceeding, (iv) Photo copy of the Medical Certificate, (v) Photo copy of the Chargesheet.

The agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields has not filed any oral evidence.

5. I have heard the argument of Sri S. K. Pandey, learned union representative on behalf of the workman Sri Tawas Mian and Sri P. K. Goswami, learned advocate on behalf of the management of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited.

6. Sri S. K. Pandey, learned union representative has argued that the concerned workman fell ill on 13.07.2002. He got his treatment in colliery's hospital on 16.07.2002. This fact has been admitted by the Enquiry Officer in his Enquiry Report. But when workman did not recover his health, he got treatment from private doctor and send the treatment papers by registered post. It has been argued by the union that enquiry is vitiated and unfair. He was not afforded opportunity for cross-examination. He was not served with 2<sup>nd</sup> Show Cause Notice. He was never chargesheeted for his previous absence. The enquiry proceeding is mala fide and biased. On the other hand Sri P. K. Goswami, learned advocate has argued that the workman never produced any treatment paper of any doctor during enquiry proceeding. The departmental enquiry is fair. Issuance of 2<sup>nd</sup> Show Cause Notice is not legally required. He has been previous absentee for which he has been punished.

7. It is admitted fact by both the parties that the concerned workman Sri Tawas Mian was a permanent employee of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited and functioning as Under Ground Loader. It is undisputed that for his absence he was inquired into and was awarded punishment of dismissal. As per workman the enquiry is vitiated he was not afforded opportunity of cross-examination and defence evidence, which has been denied by the Agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited. The fact of previous absence and punishment has also been denied by the workman.

8. From perusal of Chargesheet it is manifest that there is no recital in the Chargesheet about any witness proposed to be examined by the Enquiry Officer. Even there is no description of any document proposed to be relied by Enquiry Officer. Before proceeding with the domestic enquiry against any offending workman the Enquiry Officer must inform the workman not only the charge in precisely and accurately labelled against the workman but it is the duty of Enquiry Officer to inform about the documents upon which the charges are based. The witnesses proposed by the Enquiry Officer to be examined before commencement of enquiry proceeding. This is all the more necessary where the charges are of a general nature and relates to a considerable period of time. The Chargesheet should not only specifically set out all charges, which the workman is called upon to show cause against, but also all the documents upon which the Enquiry Officer has to reply. Without all these formalities the delinquent workman can not defend himself. The object of this requirement is that the delinquent workman must know what he is charge with and have the amplest opportunity to meet the charge and to defend himself by giving a proper explanation after knowing the nature of the charge with which he is charged, otherwise it will amount to his being condemned unheard. Though off course previous punishment can be referred in the Chargesheet and can be considered in the enquiry proceeding. But the particulars of previous punishment and copy of the documents of previous punishment must be supplied to the delinquent workman before proceeding further. The Enquiry Officer can not justify his action on any ground other than those contained in the Chargesheet. If the workman has no opportunity to reply then the enquiry will not be in conformity with the rules of natural justice.

9. Clause 28:1 and 28:10 of Certified Standing Order prescribes procedures of enquiry. It mandates the Enquiry Officer that not less than 3 (Three) days time will be given to delinquent employee to submit his explanation. At the enquiry the workman concerned shall be afforded reasonable opportunity of defending himself. The proceeding of the departmental enquiry shall be in writing in Hindi, English or in Regional Language at the choice of the concerned workman and copy of the Enquiry Report shall be given to the concerned workman day to day after the adjournment of the daily proceeding. The workman should also be given an opportunity to inspect the day to day records / documents of the enquiry proceeding.

10. Hon'ble apex court in **Pawan Kumar Agarwala v/s General Manager – II and Appointing Authority, State Bank of India and Others, 2016 (148) FLR 865** has held that :

*"If copies of documents and list of witnesses was not furnished to the workman during enquiry, the enquiry was vitiated on account of non-compliance of statutory rules and violation of principle of natural justice. "*

11. In view of law laid down by Hon'ble Apex Court, since the Enquiry Officer has neither furnished the copy of documents and list of witness to the delinquent workman nor mentioned in the Chargesheet. The enquiry is vitiated due to non-compliance of principle of natural justice. If enquiry is proceeded in a manner which indicates that the Enquiry Officer was proceeding on the basis of standard of proof, which is wrong in law and not consistent with principle of natural justice. Then in that event the enquiry proceeding will be vitiated. The prejudice will be caused to delinquent workman.

12. The Chargesheet was issued to the workman on 08.08.2002. The statement of management witness Sri S. A. Khan, Attendance Clerk was recorded thereafter without affording opportunity of cross-examination to the delinquent workman Sri Tawas Mian. The statement of Sri Tawas Mian was recorded. The Enquiry Officer submitted his report on 01.11.2002. The Enquiry Officer did not afford opportunity of cross-examination to the delinquent. The opportunity of cross-examination is valuable right of delinquent workman which can never be denied. If opportunity of cross-examination is not afforded, it is settled law that the statement contained in examination-in-chief will be inadmissible in evidence. It is relevant to mention that the workmen are generally illiterate, they are not aware of their rights, they are ignorant about rules. But it does not mean and can never mean that due to illiteracy and ignorance delinquent workman ought to be denied opportunity of cross-examination.

13. From perusal of Enquiry Report and Enquiry Proceeding it is apparent that the workman was not afforded opportunity to lead defence evidence. It was mandatory for the Enquiry Officer to afford opportunity to lead defence evidence after recording the statement of management witness. Denial of opportunity of lead defence evidence to the concerned workman is utter denial of principle of natural justice. Hon'ble Apex Court in State of **U. P. & another v/s C. S. Sharma, AIR 1968 SC 158** has held that :

*“If no opportunity is given to the delinquent to lead evidence, it was sufficient to vitiate the whole proceeding.”*

In the light of law propounded by the hon'ble Apex Court the entire enquiry proceeding is vitiated.

14. From perusal of Dismissal Order No. C-6/36/P-2744 dated 29.01.2003 it is manifest that after conclusion of enquiry and before passing Dismissal Order dated 29.1.2003, 2<sup>nd</sup> Show Cause Notice was not issued to the delinquent workman. In view of law propounded by the Hon'ble Apex Court in **Union of India & Others v/s Mohd. Ramzan Khan, 1990 (61) FLR 376**, 2<sup>nd</sup> Show Cause Notice to the proposed punishment before passing the order of termination is mandatory. The competent authority did not care to issue 2<sup>nd</sup> Show Cause Notice before passing order of dismissal. This is non-compliance of principles of natural justice.

15. From perusal of material available on record it is manifest that the Enquiry Officer has conducted the enquiry proceeding, in utter violation of principles of natural justice, denying the right of cross-examination and opportunity of defence evidence to delinquent. Even the punishing authority has passed the dismissal order without following the due procedure of law. Several factors are required to be considered before passing order of punishment. The misconduct and gravity of charge, nature of duties, work place, rights of delinquent in enquiry proceeding as well as validity of enquiry proceeding etc., failure to take into account these materials before awarding the punishment will be fatal to the order of punishment. The Order of Dismissal which is a major punishment. Without a valid, lawful, un-vitiated and proper enquiry the punishment of dismissal of any delinquent workman for mere absence of few months is illegal, unjustified and quite disproportionate to the unproved guilt of the delinquent workman which must be modified.

16. The Agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited has stated in Para-12 of his written statement that the concerned workman has been earning his livelihood from other source as such he is not entitled to even any monetary relief. But the Agent of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited has not mentioned that from which source the concerned workman was earning his livelihood. Even he has not mentioned how much amount the delinquent workman has been receiving after dismissal. If the employer intends to avoid the payment of full back wages then not only he has to plead but also to lead cogent evidence to prove that the delinquent workman was gainfully employed and was getting wages equal to the wages he was drawing prior to termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar amount. Whereas the delinquent workman Sri Tawas Mian has stated in Para-5 of his affidavit that he has been sitting without any job from the date of his dismissal. He has been cross-examined at length by the learned advocate of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited but his evidence is un-shattered. There is no reason to disbelieve the statement of delinquent workman Sri Tawas Mian which was stated on oath.

17. The Hon'ble Supreme Court in **Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others 2013 LAB. I.C. 4249** has held that :

*“Cases in which the tribunal finds that the employer has acted in gross violation of the statutory provision or the principal of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. The courts must keep in view that in cases of wrongful / illegal termination of service the wrongdoer is the employer and the sufferer is the employee / workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee / workman his dues in the form of full back wages.”*

**18.** The delinquent workman Sri Tawas Mian has filed Identity Card on record. As per the Identity Card his date of birth is 25.09.1968. Approximately he is about 49 (Forty Nine) years at present. His date of appointment is 08.02.1995, keeping in view his age and his length of service there is no possibility of getting job anywhere else. It is settled law that consequential benefits does not mean only back wages, consequential benefits includes apart from back wages other service benefits such as promotion, fixation of seniority, increment, and grant of other financial benefits admissible to the post, had be been in service.

**19.** In view of above discussion the action of management of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited in dismissing Sri Tawas Mian, Under Ground Loader from service w.e.f. 29.01.2003 is illegal and unjustified. The Dismissal Order of Sri Tawas Mian dated 29.01.2003 is here by set-a-side. The management of Khoirabad Colliery under Salanpur Area of M/s. Eastern Coalfields Limited is directed to reinstate Sri Tawas Mian with full back wages form the date of dismissal i.e. 29.01.2003 till his re-instatement. It is further directed that Sri Tawas Mian will be entitled to get all consequential service benefits. Sri Tawas Mian will be imposed of punishment of stoppage of 2 (Two) increments without cumulative effect.

### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 17 जनवरी, 2017

**का.आ. 199.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 79/04) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/327/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2017

**S.O. 199.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/04) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of South Eastern Coalfields Ltd. and their workmen, received by the Central Government on 17.01.2017.

[No. L-22012/327/2003-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/79/2004

The President,  
Samyukta Koyla Mazdoor Sangh (AITUC),  
C/o sanjay Mishra, Telephone Exchange,  
PO Kotma Colliery,  
Distt. Shahdol (MP)

...Workman/Union

### Versus

General Manager,  
Jamuna & Kotma Area of SECL,  
PO Jamuna,  
Distt. Shahdol

...Management

## AWARD

Passed on this 19<sup>th</sup> day of October 2016

1. As per letter dated 30-6-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/327/2003-IR(CM-II). The dispute under reference relates to:

“Whether the action of the General Manager, Jamuna and Kotma Area of SECL in not promoting Shri Jaisingh and Mahipal Kishore from Elect-Cat-VI to Foremen(Elect) is legal and justified? If not, to what relief the workmen are entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workmen did not appear and as such the reference was proceeded ex parte against them on 7-7-05.

3. 2<sup>nd</sup> party filed ex parte Written Statement. The contention of 2<sup>nd</sup> party management is that promotion cannot be claimed as a matter of right, it is managerial function. The promotions are based on various circumstances, administrative requirements, eligibility of candidates, recommendation of DPC etc. As per cadre scheme applicable to employees, post of Electrical Cat VI to post of Asstt. Foreman/ Chargeman, the eligibility for promotion is 3 years working in Category VI, mode of promotion is recommendation by DP, Trade Test. That workman Jaisingh was working as Electrical Category VI from 1-1-89. Workman Mahipal was working in electrical Category VI from 1-12-88. DPC was conducted in 1998. Both workmen were considered by DP among total 38 candidates. That seniority cum merit list of Category VI Assistant Foreman Electrical was considered. Trade test was conducted by DPC, names of above workmen were at Sl.No. 17 & 26. DPC did not consider them suitable for higher post and not recommended them for promotion the recommendation of DP dated 3-9-98 along with result of trade test were received. As per recommendation of DPC, successful candidates were given promotion vide order dated 25-9-98. 2<sup>nd</sup> party reiterates that action of management not promoting above workmen is legal.

4. Ex parte order against Ist party was set aside on 26-6-06. Ist party filed separate statement of claim on behalf of Ist party workman Jai Singh and Mahipal Kishore are filed by their counsel. As per the statements of claim, Jaisingh was appointed on 3-5-75. He was promoted upto Electrician Cat VI (SLU Gr.B) in SECL. He belong to ST category. In that regard, document was submitted to the management. As per the cadre scheme, Electrician Grade B Cat-VI is entitled for promotion on post of Asstt. Foreman Electrical T&S Grade C. Ist party workman was entitled for promotion to the post in 1992. However DP was conducted in 1998. Though he was eligible for promotion as per the rules and cadre scheme on seniority cum merit basis, he had fulfilled required criterias, his name was not recommended by DPC. 12 persons were promoted as per order dated 25-9-98. Employees junior to him Ayodhya Prasad a Brahmin was at Sl.No.12 in the order of promotion. Though he belong to ST Category, Ist party workman Jai singh was not promoted. Management contented that he had not produced documents related to ST Category. It is alleged that denial of promotion overlooking reservation is illegal.

5. Statement of claim filed on behalf of workman Mahipal Kishore. It is contented that he was appointed on 1-6-76 and promoted up to post of Electrician Cat VI in SECL. Identical contentions are submitted that he was denied promotion overlooking the basis of seniority cum merit junior employees were promoted as per order dated 25-9-98. The denial of promotion is arbitrary and malafide.

6. After statement of claim submitted on behalf of both workmen, management filed additional Written Statement at Page 15/1 to 15/3 opposing claim of workman. 2<sup>nd</sup> party management has denied that workmen were entitled for promotion in 1992. It is submitted that as per cadre scheme applicable to the employees, promotions from post of Electrical Cat VI to post of Asstt. Foreman/Chargeman, the conditions are that employee must work for 3 years in Electrical Cat-VI. He is also required to qualify selection test. Shri Jaisingh was working as Electrician Cat VI from 1-1-89. Shri Mahipal was working in said category from 1-12-88. They were considered in DPC among total 38 candidates. Their names were at Sl.No.17 and 26 respectively in the result conducted by DPC. Their names were not recommended by DPC. Therefore the action of management is proper and legal.

7. Ist party workmen submitted separate rejoinder reiterating their contentions in statement of claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the General Manager, Jamuna and Kotma Area of SECL in not promoting Shri Jaisingh and Mahipal Kishore from Elect-Cat-VI to Foremen(Elect) is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workmen are not entitled to any relief.

## REASONS

9. The term of reference pertains to denial of promotion to the post of Asstt. Foreman Electrical to workman Jaisingh and Mahipal Kishore. Their claim is opposed by management filing Written Statement. Jaisingh filed affidavit of evidence supporting his claim. However he did not appear for his cross examination therefore his evidence cannot be considered.

10. Shri Mahipal filed affidavit of evidence supporting claim that he was appointed on 1-6-70. He was promoted to Electrician Grade B Cat-VI. Management conducted DPC in 1998. He along with other eligible candidates were considered in DP. That he fulfilled all requisite criteria for promotion and claims to be entitled for promotion. He was arbitrarily denied promotion. Juniors were promoted on the post of Asstt. Foreman. In his cross examination, Shri Mahipal says he is educated upto 5<sup>th</sup> standard. He was appointed on the post of General Mazdoor. He got 3 promotions in his career. The promotions were to the post of General Mazdoor Category 3 & 5 and 3<sup>rd</sup> promotion to General Mazdoor Category VI. The promotions are covered by cadre scheme. He claims not aware what is provided in the cadre scheme in the matter of promotion. The DPC was introduced around 1981. DPC was conducted in 1998, 38 candidates were considered. In seniority, he was at Sl.No.8, Trade Test was not conducted. 13 workers were given promotions. Junior to him was promoted. He was unable to tell his name. he further says he doesnot know how many post for SC ST OBC were marked.

11. Management's witness Shri S.K.Pandey filed affidavit supporting contentions of management that DP was conducted in 1998. In the result, name of Ist party workmen were at Sl.No. 17 & 26. They were not recommended for promotion by DPC. The management's witness in his cross examination admits that juniors to workmen were promoted. It was on the basis of test, performance. No DPC was conducted in 1992. DPC was constituted in 1998 3 years experience is required for promotion to the post of Asstt. Foreman. He denies that workmen were illegally denied promotion.

12. Management's witness Shri V.D.Bhide filed affidavit of his evidence about constitution of DPC consisted staff officer and others 38 eligible candidates were considered. The Committee conducted Trade test and interviews. The statement showing biodata and marks obtained by individual were shown by DPC. DPC decided that candidates should secure 50 % or more in aggregate will be in panel for promotion to the post of Asstt. Foreman T&S Grade C. from evidence of said witness of management, documents M-1 to M-3 are admitted. Management's witness Bhide in his cross examination admits that promotions are covered as per cadre scheme on seniority cum merit basis. He was unable to tell whether Shri Ayodhya Prasad was considered for ST category for promotion he denied that employees junior to workman were illegally promoted.

13. Document Exhibit M-1 is copy of cadre scheme. The eligibility for promotion to the post of Asstt. Foreman requires 3 years experience on post of Electrician Cat VI mode of promotion- DPC/ Trade Test. Exhibit M-2 is recommendation of DPC. Trade test for 50 marks was conducted total 38 candidates were considered. 13 candidates were recommended name of Ayodhya is shown in ST category and Ramchandra in SC Category. In the result sheet, both of them are shown in SC ST categories respectively. Exhibit M-3 is order of promotion. Ist party workmen were not promoted. Names of Ist party workmen are not recommended by DP. Their claim for promotion cannot be upheld. Ist party workmen Jaisingh claimed that he belong to ST category. However he has not appeared for cross examination, documentary evidence that he belong to STY category is not produced. Though it is pleaded that Ayodhya Prasad promoted at Sl.No.12 is j Brahmin, no evidence on the point is adduced by Shri Mahipal Kishore. In result sheet and recommendation of DPC, Ayodhya Prasad is shown in ST Category. For lack of evidence in that regard by Ist party Mahipal Singh, his contentions cannot be accepted. For reasons discussed above, I record my finding in Point No.1 in Affirmative.

14. In the result, award is passed as under:-

- (1) The action of the management of SECL in not promoting Shri Jaisingh and Mahipal Kishore from Elect-Cat-VI to Foremen(Elect) is legal and proper.
- (2) Ist party workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 जनवरी, 2017

**का.आ. 200.**—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 41/02) को प्रकाशित करती है जो केन्द्रीय सरकार को 17.01.2017 को प्राप्त हुआ था।

[सं. एल-22012/118/2001-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 17th January, 2017

**S.O. 200.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/02) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Western Coalfields Ltd. and their workmen, received by the Central Government on 17.01.2017.

[No. L-22012/118/2001-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/41/02**

Shri Laxman Deharia,  
S/o Shri Chhavi,  
Village Umegaon, Post Umegaon,  
Distt. Chhindwara

...Workman

**Versus**

General Manager,  
WCL, Kanhan Area,  
PO Dungaria, Distt. Chhindwara

...Management

**AWARD**

Passed on this 28<sup>th</sup> day of September 2016

1. As per letter dated 22-2-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/118/2001-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Nandan Mine No.1 of WCL, Kanhan Area, Distt. Chhindwara in terminating Shri Laxman Deharia S/o Chhabbi w.e.f. 27-11-99 is legal and justified? If not, to what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of Ist party workman is that he was working as General Mazdoor in 2<sup>nd</sup> party from 20-4-91. During course of his employment, he met with accident while crossing Rail line. He suffered grievous injury. Secondly he was unable to do his work. He received treatment in Medical College Nagpur and Kanhan Area Hospital. After he recovered of his injuries, he was not taken on work. He was assured that because of injuries suffered by him, light work would be provided to him. On 20-6-95, he was declared fit after medical examination. However he was not taken back on work.

3. Ist party workman further contends that as per oral directions, he was not taken back on work is inductive. He had submitted applications to the Competent Authority and Court but he was not allowed back to work. He was not given any intimation about any enquiry conducted against him. Ist party workman prays that he may be reinstated with backwages since the date he was declared fit on 20-6-95.

4. 2<sup>nd</sup> party filed Written Statement at Page 6/1 to 6/9 opposing claim of workman. 2<sup>nd</sup> party contends that Ist party workman was working as General Mazdoor. He was habitual absentee. Workman remained unauthorisely absent without intimation or sanctioned leave. Ample opportunities were given to Ist party to improve but he did not show any interest in service. workman returned to duty according to his wishes. Workman considered concession shown to him as weakness of management and remained unauthorized absent frequently. During 1996 to 1999, attendance of workman was Nil. That chargesheet was issued to workman. Workman put his thumb impression in token of receiving chargesheet. Shri B.B.Mishra was appointed as Enquiry Officer, Shri Chakravorty as Presenting Officer. Enquiry was conducted on various dates, details given in para-5 of the Written Statement. Memo of enquiry were issued to workman. Workman had attended Enquiry Proceeding and requested adjournment.

5. Management's witness Shri Ratanpal was examined in enquiry. Ist party had denied to cross examine him. Ist party workman had stated in his statement that he is working in mine since 24-6-76, he was injured in mine on 20-4-91 having injury on his leg and back. Ist party workman was asked by Doctor for operation but he did not convey any date for operation and hence he was waiting for the same. Workman was not given any treatment neither he was declared fit. Management's Representative cross examined CSE. Accident slip, ordinary paper and discharge slip were produced by

the CSE. Enquiry Officer in his report held the charges against workman were proved. Disciplinary Authority examined the report and agreed with the report of Enquiry Officer. The punishment of termination was imposed against him. 2<sup>nd</sup> party reiterates that 2<sup>nd</sup> party provides medical facility, LTC, LLTC and several other facilities to its employees. Workman could not be continued in service as he had become dead wood. 2<sup>nd</sup> party submits that the punishment imposed against workman is proper and legal. The reference be answered in it is favour.

6. As per order dated 29-11-13, enquiry conducted against workman is found legal.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against Ist party workman of unauthorized absence are proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of termination of services imposed on workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

### REASONS

8. As per order dated 29-11-13, enquiry conducted against workman is found legal. The point whether charges of absence alleged against workman are proved or not needs to be decided from evidence in Enquiry Proceedings. Exhibit M-1 is chargesheet issued to workman pertaining to his unauthorized absence from 1-1-98 till date of issuing chargesheet 17-4-99 misconduct alleged under clause 26(30) of standing orders. As per record of Enquiry Proceeding at Page 12/9, the Ist party workman had denied charges against him. Management Representative narrated that attendance of Ist party during the year 1996 to 1998 was Nil. Management's Representative was not cross examined. Even from pleadings of Ist party in statement of claim, it is clear that he had suffered injuries. Thereafter he had suffered injuries. Thereafter he is not allowed to work. The statement of management's witness Ratanpal at Page 12/13 shows that he was dealing with the payments of the employees. Workman had not worked for a single day during 1996 to 1997. The document produced by witness is marked Exhibit M-3. The statement of CSE/workman was recorded. He stated that he was working in the mine since 24-6-76. He suffered injury on 20-4-91 in his leg and back. He was receiving treatment in the hospital. He was not declared fit. Evidence in Enquiry Proceedings clearly shows that workman had not given intimation about his absence. Therefore charge of unauthorized absence alleged against workman is proved from evidence in Enquiry Proceedings. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No. charge of unauthorized absence against workman is established, question remains for consideration whether the punishment of termination imposed against workman is legal? Ist party workman in his statement before Enquiry Officer has stated that he was working in the mine from 24-6-76. He suffered accidental injuries on 20-4-91, he was not declared fit. Enquiry Officer did not consider his statement. Disciplinary Authority also did not consider the statement of Ist party workman. The charge alleged against workman pertains to unauthorized absence from 1-1-98 till chargesheet issued to him on 14-4-99 is proved.

10. Learned counsel for Ist party Shri R.C.Shrivastva submits that there was no charge of habitual absence against workman, therefore his previous absence could not be considered as proved misconduct. Document ME-2 produced in Enquiry Proceedings is discharge certificate dated 20-4-91. Workman was declared fit for duty from 31-5-91. Charge pertains to unauthorized absence from 1-1-98. Therefore the absence of Ist party workman prior to the period subject to charge cannot be said unauthorized absence. Exhibit AW-3 is discharge note. Ist party workman was admitted in hospital on 19-8-92 shows on X-ray Examination and line of treatment provided to the Ist party workman. Without considering said document, punishment of dismissal has been imposed against workman could not be justified. Considering the above document, punishment of termination imposed against workman is not legal. The length of service and injuries suffered by workman. Workmen received treatment in hospital. Document Exhibit W-1 workman had complained backache was also not considered. Exhibit W-2 Review report submitted by Medical Officer dated 23-3-92 that workman was reported spinal canal stenosis. As per Exhibit W-3 on review, it was diagnosed as Early Lumber Canal Stenosis. Exhibit W-4 workman was provided treatment SWD – Tablet Brufan. Exhibit W-5 workman was advised treatment of Lumber Canal Stenosis. As per Exhibit W-6, workman was directed to attend hospital on 22-7-95. In cross-examination of workman in para-18, he says on 20-4-91, he suffered injuries and taken to the hospital, he was referred to Medical Officer, he received treatment for 2 years. He suffered injury at his spine. In para-20, he says he was declared unfit in 1992. Considering all these evidence and documents, punishment of termination imposed against workman appears disproportionate.

11. Learned counsel for 2<sup>nd</sup> party Shri A.K.Shashi emphasized that charges of unauthorized absence are proved, punishment of dismissal is proper. Considering the documents Exhibit W-1 to W-5, punishment of dismissal of workman is disproportionate. As workman had not given intimation about his absence from duty, punishment of withholding two increments with cumulative effect would be appropriate. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management in terminating the services of workman is not legal.
- (2) Punishment of termination of workman is modified to withholding two increments with cumulative effect.
- (3) 2<sup>nd</sup> party is directed to reinstate workman with continuity of service with 50 % backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 18 जनवरी, 2017

**का.आ. 201.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 8/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 18.01.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 18th January, 2017

**S.O. 201.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. SCCL and their workmen, received by the Central Government on 18.01.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

**Present :** Sri Muralidhar Pradhan, Presiding Officer

Dated the 28<sup>th</sup> day of October, 2016

#### INDUSTRIAL DISPUTE L.C. No. 8/2009

#### Between :

Sri Kona Jayachandra Rao,  
S/o. Nooka Raju,  
R/o Quarter No.648, T-II,  
Manuguru, Khammam District

...Petitioner

#### AND

1. The Chief General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Manuguru, Khammam District.
2. The Manager (SOM),  
PK-I Incline,  
M/s. Singareni Collieries Company Ltd.,  
ManuguruArea, Manuguru,  
Khammam District

...Respondents

**Appearances:**

For the Petitioner : M/s. G. Vidya Sagar, K. Udayasree, P. Sudheer Rao & D. Madhusudhan, Advocates  
 For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

**AWARD**

This is a petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 by Sri Kona Jayachandra Rao, the workman, who worked as Timberman at PK-I Incline, M/s. Singareni Collieries Company Ltd., Manuguru against the management for his reinstatement into the service of the management with full back wages and other relevant benefits or consequential benefits, after setting aside his termination.

2. The case of the Petitioner is that he was appointed in the Respondent company on 22.10.1984 as Badli Filler at 7<sup>th</sup> Incline, Kothagudem and he was promoted as Timberman in the year 1993. While so, he was issued with a chargesheet dated 13.2.2007 for his unauthorized absence. The enquiry was biasedly conducted on the basis of charge sheet without giving any opportunity to the Petitioner. The Enquiry Officer on the basis of lop sided enquiry erroneously held the charge as proved against him. On the basis of erroneous findings of the Enquiry Officer, the Petitioner was dismissed from his service as per the office order dated 12.9.2007. As such, the dismissal order passed against the Petitioner is entirely illegal, arbitrary, violative of principles of natural justice.

3. The case of the Respondent as stated in their counter statement is that their company operates some mines, of which the Central Government is the appropriate Government. In accordance with the averments of the Petitioner, admittedly the Petitioner was appointed on 22.10.1984. In fact the charge sheet dated 13.2.2007 was issued to the Petitioner for his misconduct of unauthorized absenteeism under the company's Standing Order No.25.25. Concerning his habitual absence from duty without any justification for the year 2006. The Petitioner has submitted his explanation. Later, an enquiry was initiated. The Petitioner has fully participated in the enquiry, in which he was given full and fair opportunity for his deeds/grievance. The Enquiry Officer held the charges levelled against the Petitioner as proved. As such, the Respondent company was constrained to dismiss the Petitioner for unauthorized absenteeism vide order dated 12.9.2007.

4. In the instant case, as per order dated 21.1.2011, the validity of the domestic enquiry was held as legal and valid.

5. During the midst of hearing of the case at the consent of both the parties, the present case is placed before the Chairman, Lok Adalat Bench on 28<sup>th</sup> day of October, 2016. Wherein a settlement was arrived between the parties. The Respondent management has been directed to take back the Petitioner workman to duty as Badli Worker (Underground) afresh. In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in presence of the members of the Lok Adalat Bench and the order so passed has been annexed to this award as it is.

7. In view of the settlement arrived before Lok Adalat Bench, a no dispute award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal and corrected by me on this the 28<sup>th</sup> day of October, 2016.

MURALIDHAR PRADHAN, Presiding Officer

**Appendix of evidence**

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

**Documents marked for the Petitioner**

NIL

**Documents marked for the Respondent**

NIL